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PORTAMERICA PROJECT OVERSIGHT

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

OCTOBER 1, 1986

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PORTAMERICA PROJECT OVERSIGHT

WEDNESDAY, OCTOBER 1, 1986

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room SD-406, Dirksen Senate Office Building, Hon. Robert T. Stafford (chairman of the committee) presiding.

Present: Senators Stafford and Moynihan.

OPENING STATEMENT OF HON. ROBERT T. STAFFORD, U.S. SENATOR FROM THE STATE OF VERMONT

Senator STAFFORD. The committee will please come to order.

Good morning, and welcome to the Environment and Public Works Committee's oversight hearing on the proposed PortAmerica project. Senator Chafee intended on chairing this hearing this morning but has a last minute schedule conflict and is chairing a conference subcommittee on the reconciliation bill at this moment. I know he will join us later if at all possible.

The committee scheduled this hearing at the request of Senator Moynihan who has an active interest in the PortAmerica project and its potential impacts on the capital area. I am pleased that the committee could honor his request to provide a public forum for discussion of this important issue.

The purpose of this oversight hearing is twofold: first, to generate discussion of the project and its potential environmental impacts and, second, to examine applicable Federal environmental review procedures and interagency responsibilities under the National Environmental Policy Act. I expect this will serve to clarify the issues involved with this project and enhance the decisionmaking process.

I look forward to hearing our distinguished witnesses today beginning with Senator Cranston. I would like to insert Senator Chafee's opening statement in the record at this point and, without objection, I will do so.

[Senator Chafee's opening statement follows:]

STATEMENT OF
JOHN H. CHAFEE
PORTAMERICA HEARING
October 1, 1986

Good morning and welcome to the Environment and Public Works Committee's oversight hearing on the proposed PortAmerica project. This hearing is being held at the request of Chairman Stafford and Senator Moynihan to provide a forum for discussion of potential impacts of the project and applicable federal review procedures.

The PortAmerica project consists of a development plan for two land parcels - one along the Maryland shores of the Potomac, south of Woodrow Wilson Bridge, and the other along Indian Head Highway south of I-95 in Oxon Hill, Maryland. Proposed development along the waterfront and over submerged land includes residential and commercial property. The Oxon Hill development proposal includes a hotel complex and a 42 story world trade center.

Significant controversy has been generated by the project since its proposal in 1984. A number of the witnesses here today will raise their concerns regarding the potential environmental, air safety, historic, and aesthetic impacts that may result from the project as proposed. We will also hear from proponents of the project who maintain that no negative impacts will result, and Prince Georges County and neighboring areas will reap economic, employment and other benefits. One of the objectives of this hearing is to provide an opportunity for these differing views to be expressed to provide us with an understanding of the values and trade-offs involved in such a planning decision.

There are numerous local, state and federal agencies which are charged with the responsibility to give thorough consideration to environmental impacts and public interests associated with projects such as PortAmerica.

At least eight federal agencies are required to make determinations regarding possible impacts related to this project including the National Capital Planning Commission, the National Park Service, the Corps of Engineers, and the Federal Aviation Administration. I believe these determinations constitute federal actions affecting the environment under the National Environmental Policy Act and therefore an environmental impact statement must be prepared. However, despite the fact that the EIS process is supposed to occur early in the planning process to ensure full consideration of impacts, no such initiative has yet been taken. Therefore, another key objective of this proceeding is to examine the applicable federal procedures for review and what triggers the necessary analyses.

Another indication that the intergovernmental planning process has not served to avoid problems in this case is the fact that Prince Georges County has filed suit against the National Park Service regarding the restricted use of federal parkland, transferred by Congress in 1985, for an access road to the proposed development.

The purpose of the federal agency review procedures mandated by Congress is to assure that actions that affect the environment are thoroughly evaluated and fully considered by the public. Thus, appropriate action can be taken to avoid any detrimental affects. I expect this hearing will help to clarify some of the issues associated with PortAmerica that will be explored in greater depth in many different public forums in the future. I look foward to hearing the views of the distinguished witnesses before us today.

Senator Moynihan, do you have an opening statement?

Senator **Moynihan**. Mr. Chairman, I do not have an opening statement save to thank you for finding the time at the close of the Congress for this hearing and to ask our guests to understand that time is a rare commodity around here; just now it's as rare a commodity as common sense and good humor. But we found this time because of the importance we attach to the subject of the capital and its environs.

If I could say one more thing, Mr. Chairman, this is not a hearing to try to inform those who would do anything that the Federal Government has an endless number of rules that make it impossible. That happens to be the case, but that is not our purpose—to put those complexities on display. To the contrary, we'd like to find out what everybody has in mind, and if it looks like we ought to help, we want to help. In any event, the people who do plan these matters need to know what is involved as they go forward. Many a great enterprise has foundered on the unawareness and the unwitting encounter with rules as they are. They can bring down noble enterprises as well as prevent unfortunate ones.

Senator Cranston and I earlier introduced legislation on this matter which was referred to the Finance Committee, but the specifics today have to do with our committee's concern.

I see our colleague is here. I welcome him.

Senator **Stafford**. Thank you, Senator.

Senator Cranston, we are honored that you are here with us this morning and we're ready to hear your statement. After you've finished, if you care to, we would invite you to join us up here for as much of the hearings as you can stay for.

STATEMENT OF HON. ALAN CRANSTON, U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator **Cranston**. Thank you very much, Mr. Chairman, Senator Moynihan.

I appreciate very much your taking the time for this hearing at a moment when we're overwhelmed with all sorts of responsibilities before our final adjournment for this year. I think that indicates the importance of the matter that has brought us together.

I introduced a height limit measure affecting the PortAmerica project, with Senator Moynihan joining me, for two reasons. I love the city of Washington, DC. That's the first reason. The second reason is that this city means a great, great deal to every American who thinks about what our country stands for, what it means, and to people all over the world who believe in democracy and look to us for leadership and for hope.

I first saw Washington in the 1930's. That's the first time I remember seeing the city. Also in the 1930's I saw and visited London and Paris and Rome and Berlin. They were beautiful cities in those days, untouched by the skyscrapers that now affect those cities. I have seen Paris, once dominated by Sacre Couer along with the Eiffel Tower, now literally ringed by skyscrapers that alter the whole beauty of that city.

I've seen the same thing happen to Rome. This city is not quite so thoroughly surrounded yet, but skyscrapers now dominate the scenery rather than the great dome of St. Peter's.

I've seen the same thing happen in London. I've seen the same thing happen in Berlin. The capital of the free world, Washington, DC, must not be surrounded by a wall of steel. Berlin now has its disgraceful wall. Let us not desegrate Washington with what could become a demeaning wall that would sink our capital, which is the dominant feature of the landscape and the environment of Washington, DC, along with the Washington Monument and the cathedral, behind a wall of steel.

What this hearing gives us an opportunity to do is to focus on some critical Federal environmental assessment procedures as they come into focus through the PortAmerica project in Prince Georges County, MD. This trade center proposal sets in motion several environmental processes including the National Environmental Policy Act, the Dredge and Fill Permit Program under the Clean Water Act, the National Historic Preservation Act, and a review by the Federal Aviation Administration.

To work, these processes need the coordinated efforts of local, State, and Federal agencies including the National Capital Planning Commission, the National Park Service, the Federal Highway Administration, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the Environmental Protection Agency, the Advisory Commission on Historic Preservation, and the Federal Aviation Administration. In all, five local agencies, six State agencies, and nine Federal agencies are required by law to review a project of this magnitude with its critical placement on Potomac wetlands, its connections with Federal highways, its impact on fish and wildlife, historic preservation issues, and air traffic implications.

The programs we review today have long been championed by this committee. The proper administration of NEPA and other programs are your responsibility and they have been well tended. Members of this committee have also shown a keen interest in the stewardship of the capital's unique historic resources through work on the Cooperative Use Act, Union Station's renovation, and the Pennyslvania Avenue Corporation.

I believe the PortAmerica project encompasses two ranges of Federal environmental interest. One is the specific Federal environmental laws that are called into play, and we must ask these questions:

Are these processes adequate to do the job Congress intended them to do; and are they suitably carried out by the responsible agencies so that congressionally mandated environmental protection is achieved?

The second range of Federal interest is the protection of the historic and aesthetic environment of the National Capital area. For nearly two centuries, generations of citizens and their governments—local as well as Federal—have fought to maintain a national center that is both political and symbolic. As a result, Washington's low skyline is one of the treasures of the world. Washington is more than just a city. It is a contiguous landscape in which sky and land and light and air are treated as partners in the full creation we call our Nation's Capital. Historically, there is little that is done in any part of the landscape that does not reflect upon the whole.

A Federal interest is clear. In fact, Federal planning more than anything else has shaped the total area into what it is today. L'Enfant's original design for the Federal City reflected George Washington's interest in the countryside at large, and his vision for the Nation's Capital did not end at the foot of the Mall. The Congress expressed its interest in the capital skyline when it enacted building height limitations with great foresight within the District in 1910. In 1926 the Federal Government created the National Capital Park Commission to develop the "park, parkway, and playground system of the National Capital and its environs."

In 1952 the Congress enacted the National Capital Planning Act and charged a new National Capital Planning Commission with the responsibility "to plan the appropriate and orderly development of the National Capital and the conservation of the important natural and historical features thereof."

Mr. Chairman, the 42-story glass tower that is the PortAmerica centerpiece has generated much concern. For it is a fact of life that tall buildings beget tall buildings. In the arithmetic of urban skyscrapers, one becomes two becomes four becomes six, and so on, until this enchanting Federal City—the Lincoln and Jefferson Memorials, the Washington Monument, the Capitol, the White House—is encircled and dwarfed by giants of glass and steel. If that is allowed to happen, generations of Americans to come will visit Washington and see new monuments—monuments to our folly.

Paul Goldberger, architecture critic for the New York Times put it simply:

> The action of putting a 700-foot tall glass tower a short distance outside of the District of Columbia would be a planning and urban design disaster . . . and if the tower is built, it may be less a victory for the idea of local autonomy as for the ability of a local government in effect to hold a central city hostage. For although Prince Georges County does have the right to its own urban planning, it is hard to believe that this right extends to a license to upset the balance of urban design in this entire region.

Mr. Chairman, I look forward to the expert testimony the committee will hear today, but it is not simply the letter of our environmental laws to which we must look, but to their spirit. The binding concepts of all these statutes are reverence for order and for space, a passionate regard for our resources, and a keen sense of the enternal equation between preservation and creation.

We have a responsibility, each one of us in the Senate no matter whence we come, to protect the vistas and skyline of our Nation's Capital. They belong not simply to those of us who work and live in this great city, but to millions of Americans for whom they are a hard-won symbol of our precious heritage.

Let us see how well we are doing in meeting that responsibility.

Thank you very much, Mr. Chairman.

Senator **Stafford**. Than you very much, Senator. And, again, I say, if you care to, we'd be glad to have you join us.

Senator **Cranston**. Thank you. I appreciate that opportunity.

Senator STAFFORD. Is Mr. Hoyer in the room? Congressman, we'd be delighted to hear you at this point.

STATEMENT OF HON. STENY H. HOYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. HOYER. Senator Stafford, Senator Moynihan, Senator Cranston, I want to thank you for giving me this opportunity to appear before you.

Mr. Chairman, I know that this hearing is on the Federal environmental assessment procedures as they affect the PortAmerica project. I understand further that this hearing is not for the purpose of involving the Federal Government in land use, which is by law reserved to local jurisdictions. However, it appears clear to me that behind the questions being addressed to the PortAmerica developer and to the Maryland National Capital Parks and Planning Commission lie two important facts which should not be disregarded.

One, the Federal Government, acting through the National Capital Planning Commission and the National Park Service, has acted aggressively to limit the height of PortAmerica tower even though Prince Georges County has unanimously approved it. The NCPC is an agency empowered by Federal statutes with planning controls over the District of Columbia and Federal buildings and enclaves in the metropolitan area. It has admitted no direct jurisdiction regarding this project in Prince Georges County.

Second, Senate bill 2537 which has been introduced by my friend, Senator Cranston, seeks to impose building height restrictions in Maryland, Virginia, and the District of Columbia by imposing an excise tax of $1 million a foot on construction of building in excess of certain limitations defined in the bill. I naturally oppose this legislation, as do most of my colleagues. It sets, I believe, a dangerous precedent.

On the particular subject of this hearing, the power to regulate land use is derived from the police powers of the States. Of course, the Federal Government has the right to control and make land use decisions concerning Federal land. The National Environment Policy Act of 1969, NEPA, which requires environmental impact statements of all Federal agencies proposing major action likely to significantly affect the environment, applies only to Federal agencies. NEPA does not authorize Federal involvement in State or local land use or zoning decisions.

Prince Georges County, Mr. Chairman, as study would show, has one of the most articulate and intricately-drawn general plans for development of any local government in this country. The Maryland General Assembly enacted the regional district act in 1927 and created the Maryland-Washington Regional District Act out of Montgomery and Prince Georges Counties. The district act granted the power to adopt the general plan for development of the regional district of the Maryland National Capital Park and Planning Commission.

The Prince Georges County Council, sitting as the district council for the part of the regional district in Prince Georges County, has adopted a most carefully-drawn zoning ordinance which includes all possible checks and balances including citizens' advisory boards.

Master plans are adopted following extensive public hearings, and zoning provisions are adopted only following examination by highly trained professional planners, architects, and zoning hearing examiners.

The zoning hearings at which the Prince Georges County Planning Board approved the conceptual site plan for the PortAmerica project included over 1,000 pages of testimony, both pro and con, and more than 200 exhibits.

The hearing on that part of the concept plan dealing with the issue on the height of the proposed World Trade Center alone took more than 16 hours over 2 days. More than 30 people testified in favor and against the tower. Only following lengthy considerations did the county council of Prince Georges County sitting as the district council unanimously affirm the planning board's unanimous decision.

It is appropriate, I would suggest, that the Federal Government let the local decisionmaking process function without undue pressure or harassment. I suggest that this hearing is not about, as the Senator I think very honestly said, environmental concerns. If every environmental concern is met, the Senator will feel that the 42-story building is inappropriate.

In all honesty, we're not talking about NEPA; we're not talking about impacts of these particular agencies. We're talking about a value judgment being made by the central government that disagrees with the unanimous planning council and a unanimous government in Prince Georges County, an adjoining independent jurisdiction subdivision of the State of Maryland. The State of Maryland, of course, was gracious some years ago to give to the Nation the District of Columbia.

The Congress should and must respect the authority of local officials to approve the land use development that they have found to be in the best interest of their citizens.

Mr. Chairman, Senator Cranston, as he can do so well, waxed euphoric about the cities of the world in the thirties. I want to admit that I cannot speak with personal knowledge on the cities of the thirties around the world; indeed, perhaps cannot now. But, Mr. Chairman, let me say something that I presume, although I do not know personally, that when the first settlers, either by land or by sea, came into the San Francisco Bay they must have thought to themselves that there was no more beautiful area in all the world than the San Francisco Bay.

The Senator, of course, is from California. I don't know whether the Senator has seen the San Francisco Bay, but Time magazine, Mr. Chairman, has an ad that deals with the San Francisco Bay. This, Mr. Chairman, is a picture in our national news magazine of the San Francisco Bay. The Senator, I'm sure, will recognize that beautiful, aesthetically pleasing natural state in which the San Francisco Bay finds itself. Now in all honesty I'm not so sure that this is a scale model, but it is, I suggest, a demonstration that Prince Georges County, like San Francisco, like the Los Angeles World Trade Center at which the Senator spoke so highly at its dedication—breaking ground or—I'm not sure whether it's open or under construction.

Prince Georges County, following every provision of its planning and zoning code, has decided to move ahead on development. On behalf of Prince Georges County, frankly, Senator, and speaking for the approximately 700,000 people there, we would find it to be an outrageous analogy of PortAmerica or anything constructed in Prince Georges County to the Berlin Wall. We find that to be offensive, and properly so.

We have done what we believe to be in the best interest of our county. We are enthusiastic about this project, designed by one of the premiere architects in this world.

Now I would invite the Senators to ride with me every day as I come to work. I live 15 minutes from here and I have done so since I was 15 years of age, so I am somewhat familiar with this area.

The project of which we speak and to which this committee gives its attention is 6.8 miles from where we stand, not contemplated by Mr. L'Enfant as part, I would suggest to you, of the mall area, the Capital area. In fact, the pictures that were originally presented by the NCPC were not in scale. They have corrected that. It will not be intrusive.

I would invite each one of you to ride to work with me and come down 395 and come by the two tall smokestacks that intervene my view less than 100 yards from this site between that road and the Nation's Capitol, of which all of us have so much justifiable pride and which moves us, every one of us, as we walk in front of it, as we look down the mall—none of which would be intruded. Look at the electric lines that intrude the view. Look at the telephone company's facility that intrudes the view.

You know, the Bible said something and I, unfortunately, can't quote it, about worrying about what's in your own eye before you worry about the splinter that's someplace else.

Senator **Moynihan**. You can quote the Bible. We do it all the time.

Mr. **Hoyer**. I know. I'd like to submit these pictures. (See pp. 57–65.)

The point I make is not that I don't share your concern or that Prince Georges County doesn't share your concern. But if we're talking about undermining, this is 100 yards from the Capitol of the United States on one of the four main arteries that lead toward the Capitol that was designed by L'Enfant to give a view of the Capitol of the United States, the center of our Nation—replete with electric wires undermining the visibility of that Capitol, undermining the aesthetic integrity of that Capitol.

We are talking about a building 6.8 miles away from here that no tourist surrounding the Capitol or the Washington Monument, unless you're on top of the monument, will see looking from the Capitol down to the Lincoln Memorial or looking from the Lincoln Memorial back.

Now you can understand the outrage—and I don't use that word lightly, Mr. Chairman—at Prince Georges County when it looks across at Crystal City and knows that it, like every one of your jurisdictions, like San Francisco, in economic competition with others, is told, "Yes, this building may be designed by one of the premiere architects in the world;" and "Yes, this may be one of the finest developments in this Nation, but, Prince Georges County, you ought not to compete with the rest of us." "TransAmerica ought to draw those competitors for international markets, not Prince Georges County." That's not fair, Mr. Chairman, and that focus is not fair.

We believe that this project is a good project, and I speak for the county executive. I am submitting, Mr. Chairman, if I might, for the record a letter from one of your impending colleagues, Barbara Mikulski. You're all going to enjoy serving with her.

Mr. Stafford, I don't ask you to adopt the premise that she will be a future colleague, but I would like to submit a letter in which she adopts the premise that I have tried to put forth to this committee.

Senator **Stafford**. Without objection, the Mikulski letter will be made part of the record.

[The letter referred to follows:]

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U.S. House of Representatives
Committee on
Merchant Marine and Fisheries
Room 1334, Longworth House Office Building
Washington, DC 20515

CHIEF COUNSEL
EDMUND B. WELCH

MINORITY STAFF DIRECTOR
GEORGE D. PENCE

October 1, 1986

The Honorable John H. Chafee
Chairman
Subcommittee on Environmental Pollution
United States Senate
Washington, D.C. 20510

and

The Honorable Daniel P. Moynihan
Ranking Minority Member
Subcommittee on Water Resources
United States Senate
Washington, D.C. 20510

Dear Senators Chafee and Moynihan:

I very much appreciate the chance to submit comments for the Environment and Public Works Committee's hearing on PortAmerica, a mixed-use watefront development located in Prince George's County, Maryland.

As a member of Maryland's Congressional Delegation, and as chairwoman of the House Oceanography Subcommittee, whose jurisdiction includes the National Environmental Policy Act (NEPA), I share the belief of the Prince George's County Government and the developers of PortAmerica that this project must meet all necessary federal, state and local regulations. At the same time, however, I strongly believe that Congress should permit the regulatory process to move forward without encumbering its path through needless, and even excessive, intervention.

Prior to serving in the House of Representatives, I was a member of the Baltimore City Council. My experience there has led me to the conclusion that the government closest to the people governs best. That is why I believe that the Congress should be very cautious before involving itself in matters related to principally local government like zoning and land use.

PortAmerica has been the subject of intensive review and analysis by a host of federal, state and local agencies. It has broad-based support from officials in Prince George's County because of its potential for economic growth and opportunity for County residents. The project's cost is estimated at somewhere between $800 million and $1 billion over a ten-year period. It has the potential to create as many as 10,000 new jobs and over $20 million annually in revenue for the State of Maryland and Prince George's County.

What is equally important in reviewing the project's economic benefits is the substantial, favorable impact it will have on the minority business community and on minority employment in the Metropolitan Washington area. The project's developer, Mr. James T. Lewis, has taken unprecedented steps in working with minority businesses on PortAmerica. In fact, Mr. Lewis has signed a Memorandum of Understanding with PortAmerica's Minority Business Advisory Board, an official advisory group he created, that will target as much as $150 million worth of business to firms owned by minorities and women.

I do believe that any legitimate environmental or safety concerns about PortAmerica should be examined by those federal, state or local government agencies which have the necessary expertise to make informed and reasoned judgments on the project. Prince George's County officials have worked carefully with Mr. Lewis and others to address a number of these regulatory issues. Their efforts affirm the principle that good environment is good business and indicates that they believe development should only proceed in a reasoned and deliberative fashion.

In conclusion, I am not advocating that the Congress acquiesce any of its statutory responsibility over mixed-use waterfront developments like PortAmerica. Instead, I am suggesting that we urge that the inter-agency and inter-governmental regulatory process on this project be brought to a timely and thoughtful conclusion in fairness to the people of Prince George's County.

Sincerely,

Barbara Mikulski

BARABARA A. MIKULSKI
Chairwoman
House Oceanography Subcommittee

Mr. HOYER. I will not go on any further other than to thank you, Mr. Chairman, for this opportunity to appear before you and hope that you, sir, will give the same consideration to our subdivision, an independent, political entity of the State of Maryland, that you would want given to your subdivision. We think that's fair.

We understand that we are close to the capital of the United States. Again, as I point out, that's because Maryland gave the land for the capital of the United States. That should not redown to our detriment. That should not impede our own economic development. That should not impede, unlike the Berlin Wall, which impedes free choices to be made because of the imposition of a tyrannical central government's reel on its individual people. That should not impede Prince Georges County in exercising through the democratic process, of which the Senator spoke, its only ability to develop its own land as it sees fit within the confines of the law.

Thank you very much, Mr. Chairman.

Senator STAFFORD. Thank you very much, Congressman.

We will include in the record the pictures that you brought with you. See pp. 57–65.)

Senator STAFFORD. Senator Moynihan, do you have any comments or questions?

Senator MOYNIHAN. I want to thank our distinguished friend, for his testimony and for calling attention to a fact which he has every right to do—that the present District of Columbia is a gift from the people of Maryland to the people of the United States. Virginia was also involved at one point and then took its gift back.

Mr. HOYER. They reneged, Mr. Chairman. Senator, I'm pleased that you note that Maryland did not.

Could I rethink?

Senator MOYNIHAN. As you do rethink, let me give you some thought about what might be involved. I think history proves or statistics show, that the natural capital of the United States of America is New York City.

That's where it began, our country, its first capital, in New York. In that very early constitution-making period as a quasi-constitutional decision—I say that with great seriousness—the decision was made to move the capital from the city of New York to a swamp on the banks of the Potomac, which turned malarial in April so that any Congressman who stayed on in May might not be back in December.

Mr. HOYER. So it was more effective than Gramm-Rudman probably.

Senator MOYNIHAN. But as a statement of the separation of powers, this was a separation of the power of the Federal Government from the influence of the great metropolis which then, as now, remains the capital for most everything else. That national magazine you were holding up was published in Manhattan, and the center of finance in this country is in Manhattan, and the center of publishing and a great deal of business—not all, but most of the activities you associate as central to a capital—finance, culture, literature, architecture in many ways—remain in New York. Our capital, unlike any capital in Europe, is separate.

Now when we made that decision, we made the decision that we wanted the capital to be something different. We wanted it not to be a great State. L'Enfant was chosen by Washington—by Jefferson basically—and the design of the capital that he drew was in many ways a diagram of the Constitution. The Congress House, as he put it, on top of Jenkins' Hill, the highest point in the city; the long Pennsylvania Avenue leading down to the President's house; and the different squares it was so stated that would gradually fill up with activities anticipated.

This plan has never been completed, but nothing has ever happened to make it impossible to complete. That's the thing.

You showed us some of those not all together edifying images on the way over from Anacostia. Well, let me say, sir, in 1901 when Senator McMillan took over a commission on the Mall, they were going to build Union Station right at the bottom of Capitol Hill. The railroad owned the property. Pennsylvania Railroad owned the property. Mr. Kasat, who was the president, was persuaded by this Congress to move the station about 200 yards that away; right? And we have been involved in fixing the roof ever since I've come on this committee.

Mr. Kasat also said, "I will do that if you put the post office next to it." He was not for nothing the president of the Pennsylvania Railroad. We saved the Mall in that moment.

Twenty-five years ago literally—I've been thinking of this because I made a little talk about the Willard Hotel the other day—President Kennedy in his inaugural parade went down Pennsylvania Avenue and he saw the city trying to leave downtown, float out Connecticut Avenue, Massachusetts Avenue, as the people do to larger land tracts, the sort of thing we're dealing with here. You need a big plot, a tract put together for most projects these days. He mentioned that to Justice Goldberg. Then the Secretary of Labor turned it over to me and within a year we had set up the Pennsylvania Avenue Advisory Commission.

Looking at the plan L'Enfant had left us, we said, "We can still keep it. Nothing's ever blocked it." It's almost as if some great force in the enterprise—when it was forgotten, it was even so not ever fundamentally abridged. It's taken 25 years and, to my personal involvement, four Presidents, and two on their own when there was nothing they could do about it—six Presidents have been involved in getting this avenue back. Why? Because we did not want the Capitol isolated. The Capitol is the center of this plan.

So we're pursuing that position. We've been at this a very long time. This city is not a normal city. This city was meant to stand for something different. It was the first time a capital—in Europe all capitals were in their great city. The idea of moving to a highly unsettled place hadn't happened.

That's what I meant—thanking the people of Maryland, but always reminding you that if you find the burden intolerable, New York City is prepared to reconsider the move.

Mr. **Hoyer**. That was, of course, the city of my birth, I came here from New York. I appreciate the fact that New York was our first capital.

We have such a long way to go before we are New York that it will be centuries before the Federal Government will ever consider that, Senator, we in Maryland certainly hope.

Senator **Moynihan**. Thank you, sir, very much.

Senator **Stafford**. Senator Cranston, do you have any comments?

Senator **Cranston**. I would just like to make one comment.

You displayed that portrait of the skyline of San Francisco. The economics of San Francisco are dependent upon a great harbor, a great bay, the fact that San Francisco is not only at the western edge of the United States, but it's at the beginning of the Far East with its civilizations and its markets. That is why San Francisco has been built up as a great city.

Prince Georges County in terms of its economics is dependent upon its adjacency to the national capital in many respects. If the capital had not come here, Prince Georges County would abut Senator Moynihan's swamp, and I doubt that it would then be a likely site for the PortAmerica tower. It's because of this city with all its commerce, with all its people, with all of its markets, that it is an attractive site for development like Prince Georges County. That makes it quite different from San Francisco, and it creates the link between this capital and our concern about keeping this capital what it is and not allowing it to become something quite different.

Mr. **Hoyer**. If I could respectfully respond, Senator, if I were representing California, I think that logic would appeal to me. If I represent Prince Georges County and the State of Maryland, for whatever reasons, we are here where we are and we, like you in San Francisco or in Los Angeles, desire to develop our best efforts economically, politically, and socially. We believe we can do that in Prince Georges County.

Prince Georges County is an exciting county. It has the largest minority representation of any suburban county in the United States of America. It's an integrated county that's working and it desires to be more than a bedroom community. Notwithstanding the reason we are a bedroom community—that is, the placement of the Federal Government adjacent to Maryland because Maryland gave that site to the Federal Government—like the people of San Fracisco or Los Angeles or California, we have aspirations and hopes and we believe that we can do important and good things in the course of operating within Prince Georges County as well as relating to the central city. I'm sure that's true of every suburban area in your State as well, Senator, and I would hope that we would be given that ability to do so within the framework of the law.

Senator **Cranston**. Well, you represent a part of Maryland; I represent California. We both represent the Nation in many respects.

Mr. **Hoyer**. Yes.

Senator **Cranston**. We write the laws for the Nation. We have national responsibility. It is in terms of those national responsibilities, not in terms of my representation of California, that I have taken the view that I have taken of Prince Georges County.

Mr. **Hoyer**. I understand that, sir.

Thank you very much, Mr. Chairman.

Thank you for that very enlightening background of the development of the Nation's Capital.

Senator **Stafford**. Thank you very much, Congressman.

We have three panels. The first panel will be Mr. J.T. Lewis who is a developer of PortAmerica; Mr. Philip Johnson and Mr. John Burgee, architects of PortAmerica—if they would come to the witness table.

Gentlemen, your written statements will be made part of the record.

In view of the proceedings over in the Senate itself and the time constraints on our members, we're going to have to ask you to complete your testimony in about 5 minutes each. If you'd all do it in 5 minutes, I'll give you the Calvin Coolidge award for brevity.

Why don't we go in the order in which I've called your names, which means, Mr. Lewis, you will be first, followed by Mr. Johnson and by Mr. Burgee.

STATEMENT OF JAMES T. LEWIS, DEVELOPER OF PORTAMERICA

Mr. **Lewis**. Thank you, Mr. Chairman, Senator Moynihan, Senator Cranston. It's a pleasure to be here and to have the opportunity to explain this project here.

There's so much more about it than a tall building that I hope that, even if you continue not to like that one particular element of it, that you'll see that there are other elements as well that have great redeeming value.

My predominant interest in this project is to achieve the utmost architectural excellence for this most important and beautiful site. Accordingly, upon obtaining control, my first effort was to retain who in my opinion at least, and I think in many others, are the greatest architects in our country: Philip Johnson and John Burgee.

It was the good fortune of the entire metropolitan community, particularly Prince Georges County, that they agreed. Their work on the project has been intense and the result of their efforts and the tall building in particular has been described by many as their best work. In fact, I think the architectural critic for the New York Times, Paul Goldberger, to whom reference was made earlier, referred to this as their best form, this tall building.

But each element of this project must be understood in its overall context. This is a huge project which includes almost a mile and a half of river front and an equal distance along a major arterial highway, Highway No. 95.

One major point at the outset of this presentation I would like to make: although there has been, of course, controvery regarding the height of the one building, everybody of whom I'm aware very strongly and actively supports that riverfront development. That includes the National Capital Planning Commission and the National Park Service.

My agreement under the memorandum of understanding was with the—involved the riverfront only, and I believe except in a few minor instances that I pointed to them, we have more than conformed with their requirements.

With that, I'd like to proceed immediately to a series of slides that we have prepared that show the project in its entirety.

This is the overall view of PortAmerica. I'm going to try to talk rather hurriedly to conform to that rule.

In the lower end is the Woodrow Wilson Bridge coming into the project, coming in from Alexandria. This right here is 295 coming from Washington, and that is 95.

The general concept was to take the intense development away from the riverfront where it had been by the predecessor plan—office buildings with attendant parking and traffic— and move it up on Highway 95 leaving the riverfront in a low rise basic development of residential with some commercial up here in the north end.

This is to the extreme north end of the property, and there's a park for the public that we worked out as part of the memorandum of understanding with the National Capital Planning Commission. Note the various gazebos that are planted for vantage points and there will be water-related activities there for the public.

This is the picture of the harbor area with the five-story hotel, the World Trade Center tower in the background, the water terminal in the foreground, and the two-story retail shopping area in the back. Notice the classical design.

Where we have the 5-story hotel our memorandum of understanding permitted a 150-foot building. Where we have the two-story retail shopping area we were allowed to put 90 feet. We did not maximize the height that we were permitted under our agreement with the National Capital Plannning Commission. Aesthetics, good architecture, and sensitivity to the environment were our predominant concerns here.

This is the plaza area in front of the shopping for the public. Notice its waterfront relationship. In the background is the boat terminal.

This shows the development of a 12-foot public esplanade that runs along the entire river frontage. We did not build the residential or any other part of the project up to the water. We saved that for the public.

A community center—again, water related.

The next two pictures, this one and the next, are the typical residential showing Georgian architecture surrounding a park, which is typical. Again, the green space exceeds greatly that which we were allowed under our MOU.

Toward the southern end, this is an inn with a crystal restaurant, as Philip and John call it, with a decorative lighthouse in the extreme right of the picture.

This is the World Trade Center complex up on top of the hill showing the general scheme of the one very tall building which is now 42 stories amidst lower buildings. We now have for those buildings planned 14 stories for the office buildings and I think the hotels are 12 stories in back of that.

This is the overall complex for the World Trade Center on the top of the hill and shows the amount of greenery that the particular plan permits. The taller the building, of course, the lesser the footprint. Note the parking structures and the consequent ability to have green space.

An alternate to this plan, if it were built according to the National Park Service NCPC requirements, as a typical southern Prince Georges County development or suburban development might be an asphalted hillside there with cars parked, but we didn't do that. We tried to maintain as much greenery as we possibly could.

That completes the slide show. Does this red light mean I'm out of time, Mr. Chairman?

Senator **Stafford**. I beg your pardon?

Mr. **Lewis**. Does that red light mean I'm out of time?

Senator **Stafford**. Well, if you have some further comments, go ahead.

Mr. **Lewis**. Just two or three other points I'd like to make:

We have endeavored to be as cooperative as possible with every Federal agency that you've named here, including the National Park Service and the National Capital Planning Commission. Although our agreement with NCPC provides only for the riverfront and explicitly excludes the upper parcel, we've met with them twice about the tall building to try to explain it to them before finally making up our mind and then later to explain the reduction.

I'll leave it up to my colleagues who can describe the project much better, Philip Johnson and John Burgee.

Thank you very much.

Senator **Stafford**. All right.

Senator **Moynihan**. The one slide you didn't get to was the tower; am I right? You were just about to get to the tower, weren't you?

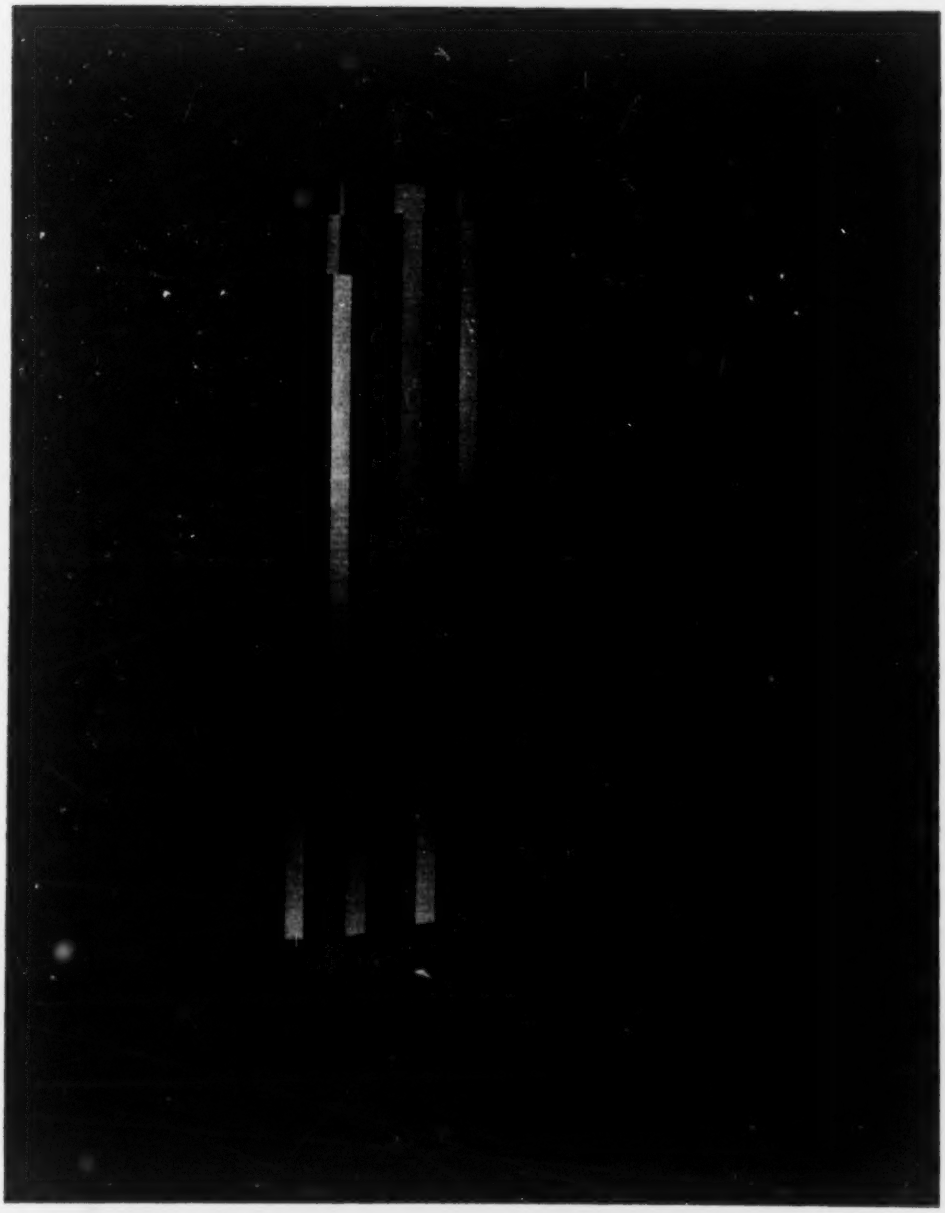
Mr. **Lewis**. Yes, we have that in our booklet, Senator Moynihan, and we were going to show it but did not. Would you like for us to put it in? Would you like to see a slide of the tower?

Senator **Moynihan**. Yes, could we just see that?

Senator **Stafford**. Sure. Sure.

Mr. **Lewis**. Sure.

[The slide of the tower follows:]



The proposed 42-story World Trade Center Washington, D.C. will be a multi-faceted crystal-like tower. It will serve as the centerpiece for PortAmerica.

Senator **STAFFORD**. Mr. Johnson, I think you were about to begin, if you wish.

We will have to hold the witnesses to about 5 minutes. When you start, we'll go on the green light and in 5 minutes you'll be running a red light.

STATEMENT OF PHILIP JOHNSON, ARCHITECT

Mr. **JOHNSON**. I'll be a lot less than 5 minutes.

I find that the junior Senator from California is a bit too young for me. I know all these capitals from the first war, and I find that he would agree with me that they were still finer looking in those days, sir, and that they are, indeed, continually in our minds as we design around the city of Washington, which is, thank goodness, kept low and kept beautiful.

But I find myself agreeing with everything that everybody says, which is no way to make an argumentative point, but it does symbolize something—that we are in total agreement, all of us, that the Capital of the United States as a city and as an emotional and historic center must remain pure and beautiful, and we have no intention of doing anything else.

I am myself a card carrying preservationist. I marched in favor of one of our great buildings. Senator Moynihan was too young to remember it maybe 30 years ago when they tore down the Pennsylvania Station, and they shouldn't have. I led an eminent band of 10 people hooted at by the commuters to preserve that great masterpiece. So I consider that I myself came to this problem of the Trade Center in Prince Georges County with a great deal of trepidation. We have no intention whatsoever of interfering with the beauties of the city.

For instance, here is one sentence in capulation of the testimony later that was put out by the president of the National Trust for Historic Preservation, Jack Walter. He says:

"The national trust takes the position in support of the symbolic and visual pre-eminence of the city's landmarks of democracy and, thus, in opposition to the PortAmerica tower"—now comes the point—"if it can be shown to diminish that special character."

I present, gentlemen, that it cannot be so presented. We have no in any way encroached on the visual center of this glorious city. Quite the opposite, we consumed it very carefully from the Capitol and from the White House and from the national monuments all over. You can't see it. You can see the city of Rosslyn, the abominable wall that occurs in a neighboring State which shall be nameless, but it does impinge on the views.

I'm sure Senator Moynihan, who is the most eminent and most conscientious architecture lover that I'm familiar with—we've agreed many times in the past years with the point of view that he's enunciated today, and I've always been agreement with him and I always shall be.

What we are creating in Maryland, however, a Maryland monument, a marker, a point of recognition of the State of Maryland as you cross from the State of Virginia, and I do agree naturally with the Congressman that this is Maryland's right to have such a marker.

I want to salute the developer for not making a cluster of jammed-up buildings of midrise, but a building which is incidentally more expensive, a landmark building to mark the entrance to Maryland, but also as a marker and a point for our town which is not under much attack because everyone I think rather agrees it's pleasant to have a regency town on the water's edge with a beautiful water promenade. That's not the point.

But we need in that town a recognition symbol also. We do not have religion as a basis. We do not have a national cathedral. We do not have a New England meetinghouse with the spire sticking above the hills of Vermont or New Hampshire, which you're also familiar with.

We have instead a glass tower. The tower is not, as you notice, a Georgian tower of Rennaisance in design. It has no design pretentions in that sense at all. It's a very simple shaft much as another one nearby which shall not be mixed up with it, but we don't want that to be considered at all as a part of this.

The monument to Maryland, the monument of our town, the marker of our town, and the distance from the Nation's democratic headquarters is in our minds clear enough, and we submit that we should be allowed to build this town and this center, which incidentally will not affect your jurisdictions, Senators, in any way.

Thank you.

Senator **Stafford**. Thank you, Mr. Johnson.

Before we go to questions, why don't we hear Mr. Burgee?

STATEMENT OF JOHN BURGEE, ARCHITECT

Mr. **Burgee**. Thank you, Mr. Chairman, Senator Moynihan, Senator Cranston.

My name is John Burgee. I'm with John Burgee Architects with Philip Johnson.

My partner has described some of the architectural merits and the way we have proceeded with this project, and we have discussed this project with many groups and with many agencies. In fact, we worked with the NCPC and the Park Service in developing the waterfront parcel. We have had nothing but praise from these groups in all aspects except one, and that's the tall building.

Many critics haven't questioned the building itself but have questioned its possible adverse impact on the national monuments. I would like to address this point and how one evaluates the impact of a building before it's there. How do we visualize what it will be to avoid any negative impact on the monumental area?

One method that is often used to help visualize a proposed building in its setting is to superimpose an image of the proposed building on a photograph of the area. This, though, is a very complex technique and, if not done properly, can be very deceiving. It requires accurate selection of camera lenses, precise measurements of perspectives, skilled application and positioning and intensity of the superimposed image, and careful processing and cropping of the resulting prints.

If all is done correctly, an approximation of the appearance of the proposed building may be obtained. In fact, such pictures were made and widely distributed to the press and others by the NCPC.

These were, I'm afraid, used by many, perhaps even by you, to judge the impact of the tower. Unfortunately, these photographs were terribly unaccurate— so inaccurate in fact as to badly misrepresent the facts.

We have had experts study the photos that determined these inaccuracies and have in turn assisted us in preparing similar exhibits as accurately as possible. In preparing our photographs, we have used helicopters hovering over the site of the proposed height of the building and photographed it from dozens of locations in and around the Washington area. We have checked our results with computers, even calculating the effects of the curvature of the earth and the refraction of the atmosphere.

I would like to show you some of these results. They're contained in the books I think were distributed to you earlier. The picture that we made with our experts is exhibit P. (See p. 24.) It is a photograph supplied by the NCPC. We have tried to superimpose as best we could our building. It's shown on the very, very far left because that was the extent of the photograph we were able to work with. You see that little gray shadow on the very edge of the photograph as you look at it.

Now if you look at exhibit Q, (See p. 25), this is the photograph that the NCPC made and distributed to many. You can see the results are quite different.

I should point out that the picture was taken from the balcony of the White House. From the ground the tower is not visible, as it was not from the majority of ground locations we studied, including the Washington Monument, the Lincoln Memorial, the Capitol building, and Mt. Vernon.

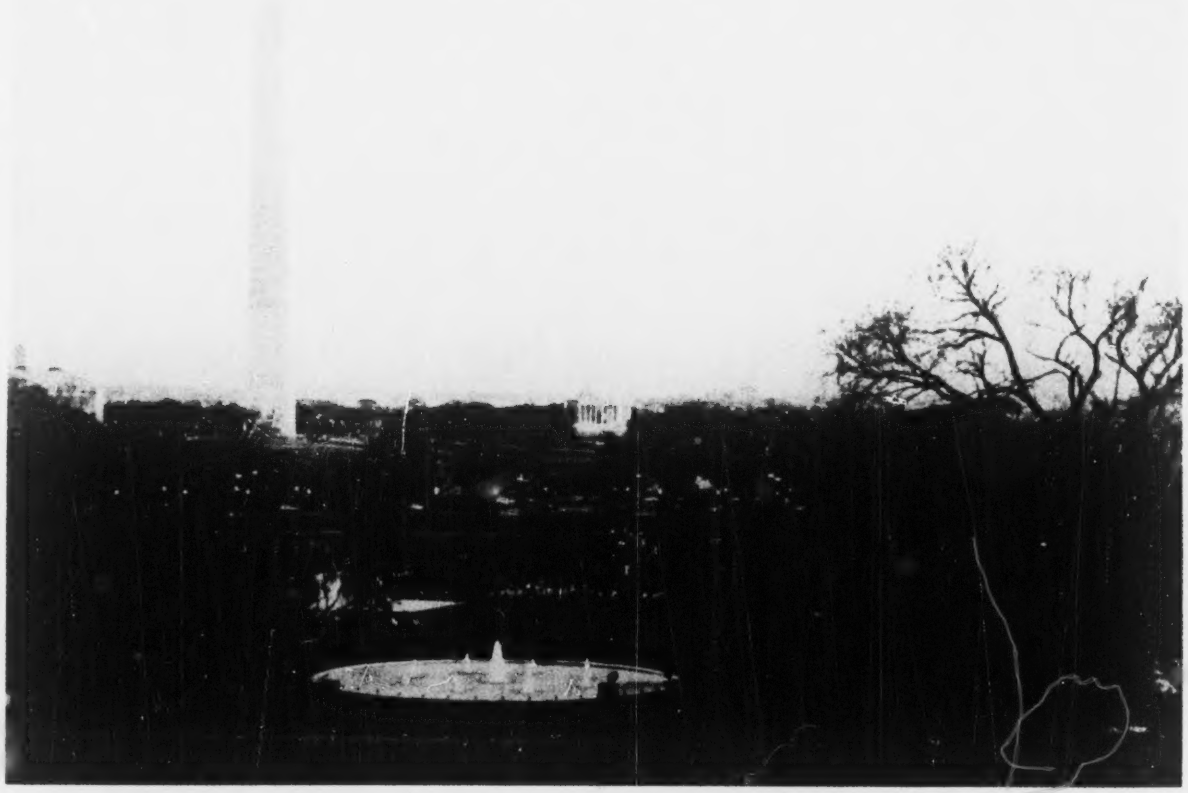


Exhibit P—View from the White House Truman Balcony of the 52-story World Trade Center. (prepared by James T. Lewis Enterprises)

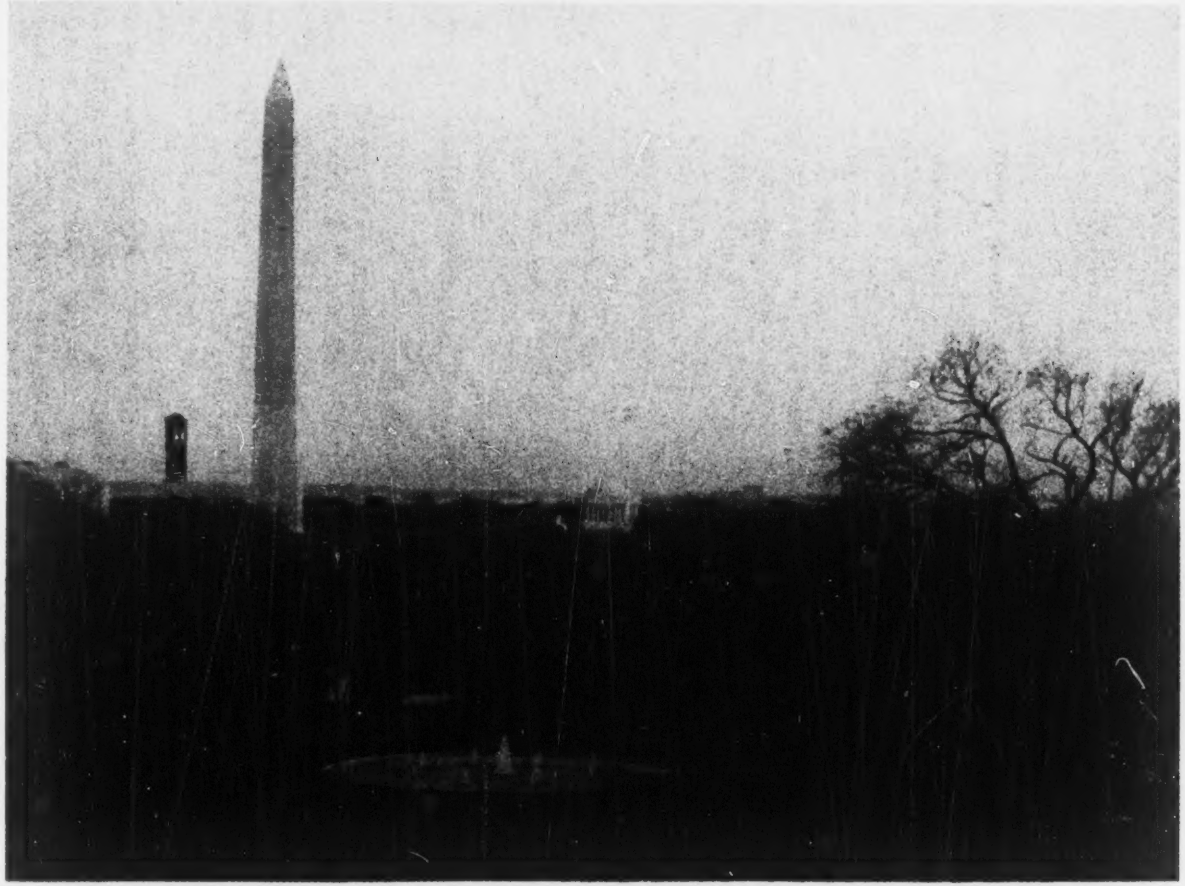


Exhibit Q—View from the White House Truman Balcony of the 52-story World Trade Center. (prepared by National Planning Commission)

Mr. **Burgee**. These photographs might be helpful, but we should remember that people don't see a like a camera. The camera may give an approximation, but, unlike a person, it is static; it is momentary; it has only a limited field of view; and a single focal length for each photograph. It is not really what a person experiences, and that is what we are interested—a person's experiences, not an inaccurate, misleading photograph.

How can we judge a person's experience, then? Let us consider our own visual images around the capital area for comparison. Rosslyn is 2 miles from the Washington Monument. The National Cathedral is 2.9 miles away. The Capitol Building itself if 1.3 miles from the monument. Our site is 7.4 miles away.

Diagrams that show them all next to each other, as have been printed in The Washington Post, are simply not as they would ever appear or ever be perceived. Yes, the tower is bigger than the monument, but how is it perceived? I would like to show you two exhibits that try to give some idea of the impact with the building and the monument in accurate juxtaposition.

The diagram that's on the easel here to my left shows the Capitol and the Washington Monument on the left of the diagram with the tower on the right at the same scale. The distance between is also drawn at exactly the same scale. We have the building that we're talking about with the monuments down on the lefthand side.

A second diagram we prepared is similar to this but superimposes some of the other facilities in between and shows how a person might see if they're standing in the monumental area. If you're standing, for instance, at the White House, which is in the far left of this photograph, you see that your line of sight above the Washington Monument, above 12-story buildings is way far above our tower as it's contemplated on the righthand side.

Just for comparison, the USA Today building is shown in the middle of the lefthand panel. So you see it is very difficult to see that tower.

In addition, I would like to cite one example with which we are all familiar. The city of Paris has many similarities to Washington. It is a capital city containing France's most sacred monuments and buildings in the monumental areas are low. Some years ago a highrise building out of character with its surroundings was built on Mt. Pernaise. It horrified the French and anyone who admired that city. The French immediately banned any further towers near the monuments and designated an area known as the Le D'Effance far from the monuments for future highrises.

The tallest building built there in the early seventies was 44 stories, the Tower of Fiat. If any of you have been there since that time, I think you will agree it had no adverse effect on the monuments. Yet it is just 2.6 miles away from the Arch D'Triumphe directly in access down the Champs D'Elysses.

Our tower is 7.4 miles from the Washington Monument, nearly three times as far but with intervening buildings and fields and wooded areas. At this distance it cannot overpower or the diminish the monument. It is not even visible from its base.

We have also heard a great deal about air safety, another complex subject. Simply, however, any structure projecting into the airspace should be studied for its possible adverse effects on air safety. The techniques for such a study are much too involved to go into here, but, believe me, the proposal is being studied in minute detail by the best independent experts as well as the qualified technical people at the FAA, the Air Line Pilots Association, the airline companies.

Under normal operating conditions—that is, good weather conditions—and even in bad weather conditions when the primary instrument guidance systems are working properly, there is no problem.

We are now studying the procedures when both weather is bad and when the primary systems fail, which occurs only rarely when backup systems must be used.

While we feel that all conditions could be accommodated with the tower at the original proposed height of 800 feet, we have lowered the building by 171 feet to give an extra measure of safety.

The Air Line Pilots Association has recently informed us and the FAA that they feel that that present proposal can work without affecting present procedures. The FAA and others are still reviewing it, but we feel quite confident that all safety requirements can and will be met. We will continue to work with the FAA to that end.

We feel that this can be a model project, an asset adjacent to our Capital of which all of us can be proud. We feel that the tower, Washington's World Trace Center, rather than adversely affecting our monuments, will be a great new asset to the region and to our country.

Thank you, Senator.

Senator **Stafford**. Thank you, Mr. Burgee.

The Senator from Vermont is still certified at least as an airplane pilot, although I'm not very active any more. So I am glad you've touched on the question of air safety at the southern approaches to the city with the tower at this height, and I think probably the airline pilots are glad that you've taken 171 feet off from the height. They might like even more off, but that's something that needs to be considered.

Senator Moynihan?

Senator **Moynihan**. Mr. Chairman, what a privilege to have Philip Johnson and John Burgee before this committee. We don't often have such sensitive accounts of what is involved here, and very capable points.

Mr. Lewis, you have chosen well.

I take Mr. Johnson's statement that what you have sought in the tower is a marker, as you say, a point of recognition as you enter the State of Maryland from across the Potomac, and that's wholly legitimate as an idea. Our question is whether it's the best marker.

Have you ever thought of an 800-foot hole in the ground? That would be something. Various things are possible.

Obviously, you have an extraordinarily thoughtful design for the city there and one considerate of the setting and a place you'd like to live.

Legislation fixing the height limits in the city was set by Congress, it obviously doesn't automatically extend across the border of the District of Columbia, but there was nothing on the other side of that when that happened. Rosslyn has sort of slipped up on us; I wish they had asked you to do Rosslyn.

We're going to think about this a lot. We're thinking about it very much in terms of the very legitimate points Mr. Burgee made about how the eye does see. On the other hand, a very slight suggestion of the priorities in these matters under the Constitution—as I say, L'Enfant designed the city in a way so that it's a diagram of the Constitution, and you have the view from the White House balcony; the view from the ambassador's porch on the Senate side of the Capitol might be more relevant next time you talk it. What will we see when we come out in the evening, as it were, because the Capitol is, in fact, meant to be the highest structure and meant to be the center of affairs, and we will ask ourselves these questions and we will know a lot more about them because of your presentation.

Mr. Lewis, again you are a benefactor in the State of Maryland to the degree that you have brought these men to help you develop.

Thank you, Mr. Chairman.

Senator STAFFORD. Senator Cranston.

Senator CRANSTON. Yes. Well, I thank you very much for your testimony and for the great deal that is marvelously beautiful and attractive in the plans that you have. Obviously, many parts of it would grace Prince Georges County and be a great attraction to people that live in the Capital to attend.

A number of people, myself included, are concerned that the PortAmerica tower is very likely to lead to other tall buildings, as we have seen that happen around other beautiful capitals around the world. Does the fact that your tower might well lead to other towers or other skyscrapers concern you in any way?

Mr. LEWIS. May I respond, Mr. Chairman?

Senator STAFFORD. Yes, indeed.

Mr. LEWIS. I was going to ask the Chair to indulge my being allowed to respond to Senator Cranston's initial comment on that point. As I've heard the criticisms and concerns about this tower, that, frankly, is my main concern, too—is the legitimate concern.

Parris Glendening and I have had some long talks about this, Parris Glendening being the county executive of Prince Georges County. Paris has made a rather eloquent statement that we have included as exhibit Q among these documents that address that point toward the last few pages of it.

That was elaborated upon a great deal by Parris in his appearance before the National Capital Planning Commission a couple of weeks ago. The net result is that he gives very strong assurances based upon the logic of land planning within Prince Georges County that at least within that county there would not be other tall structures anywhere near the Washington Capital. Basically I think there are three density centers in the south end of the county. The two others are far removed. That's the essence of his remarks. I think in Prince Georges it couldn't happen, Senator Cranston.

Senator CRANSTON. With regard to the construction of the tower, what is your present plan date to start construction?

Mr. LEWIS. My preference would be to start the tower next spring. We have voluntarily negotiated very extensive archeological studies on the site, on that upper site where the World Trade Center complex will be, and we'll be doing that for probably the rest of the year. I've authorized the construction drawings to start as of yesterday, and we hope that we'll be able to begin the tower next spring.

Senator CRANSTON. Does the Federal Aviation Administration, as far as you understand it, agree that lowering your building from 52 to 42 stories will satisfy air traffic patterns concern?

Mr. LEWIS. The answer to that would be yes. As I understood it from our consultants, 52 probably would have been safe. To me, that has always been rather a nonissue anyway because we have always said that if the building was unsafe we would change it accordingly, notwithstanding the design.

But the reduction to 730 feet was very meaningful to the pilots. It made it much more convenient for them, at least in their view much safer. My understanding from substantive talks with the FAA, not to speak at all for them, is that this should be a safe building. I would not think they'd have a concern with it at that elevation.

Senator CRANSTON. I'd just like to note that John O'Brien, director of the Engineering and Air Safety Department of the Air Line Pilots Association International submitted testimony for the record that indicates ongoing concerns about what they call this very safety threatening proposal to construct a very tall structure in the aircraft approach and departure environment of National Airport. So I do think that's another matter that we do have to consider with great care.

I thank you very much.

Mr. LEWIS. If I may respond to that point, Senator—we do have Mr. Moore's statement from the Air Line Pilots Association as exhibit V. He does list, as you indicate, several concerns, but those concerns we were confident we could meet. In fact, we basically had planned to meet them anyway.

We have been very carefully working with the Air Line Pilots as well as FAA, and we're confident that we can meet all those concerns.

Senator CRANSTON. Thank you.

Senator STAFFORD. Thank you.

Thank you, gentlemen.

The next panel will be Mr. George White, Architect of the Capitol; Mr. J. Carter Brown, chairman, D.C. Fine Arts Commission; Mr. Reginald Griffith, executive director, National Capital Planning Commission; Mr. Alan Hill, chairman, Council on Environmental Quality; and Ms. Susan Recce, Deputy Assistant Secretary for Fish, Wildlife and Parks, Department of the Interior. If they would come to the witness table.

Gentlemen, it would be our intent to ask you to testify in the order in which we called your names. Where you have furnished us with written statements, summarize them within the 5 minute limit that we regret we must ask you to comply with.

We will start, Mr. White, with you, and you will be followed by Mr. Carter Brown.

STATEMENT OF GEORGE M. WHITE, ARCHITECT OF THE CAPITOL

Mr. WHITE. Thank you.

I'd like to make one or two preliminary remarks, if I may, Mr. Chairman. The first one is to corroborate what Senator Moynihan said, but in slightly different words—all other major capitals in the world with the exception of two, were cities before they were capitals. Washington was a capital, and the first one, before it was a city. That same concept has been followed in Brasilia, as you may know, and in Canberra, which is the capital of Australia. So it is a unique circumstance here. There was a concern for a plan that would be unique and lasting.

Secondly, I would like to say that I am not in disagreement with the design of the building itself; as a matter of fact, I compliment the architects on their architectural design. They're among the finest architects in the world, both good friends of mine, I hope, and their design is excellent. The problem with the tower, in my judgment, is that it's in the wrong location for that kind of architecture.

Now, if I may, Mr. Chairman, I'll paraphrase the written statement. I should say in advance that I thought it useful to provide some support for whatever credibility I may have in this testimony, and so I included the fact that I'm the chairman of the Design Committee of the Pennsylvania Avenue Development Corporation, which you mentioned, Senator Moynihan; a member of the District of Columbia Zoning Commission; a member of the Advisory Council on Historic Preservation. We prepared the master plan for the U.S. Capitol which recently won an institute award by the American Institute of Architects. I've been chairman of the Australian Parliamentary-appointed committee to investigate and report to their Parliament on the urban design and planning and development of the city of Canberra. So I have some experience in urban design questions aside and apart from 30-some-odd years in architecture, perhaps almost 40, a length of time which I hate to admit.

Mr. Chairman, the protection of the Federal interest in the urban design of our Nation's capital and its environs was recognized by the founders of our country by a provision in the Constitution to which you referred, Senator Moynihan. It happens to be article 1, section 8, clause 17, which establishes a district 10 miles square for the seat of Government.

After the acceptance by the Congress in 1790 of the lands ceded by both Maryland and Virginia for that purpose, George Washington himself established by proclamation on March 30, 1791 the lines and bounds of the District of Columbia. The original District, as you know, extended beyond the ridge of hills on the Virginia side of the Potomac in order to control the vistas in all directions.

The design of the city by Pierre L'Enfant, which based its baroque visual and aesthetic effect on the broad avenues and distant vistas, is corroboration of the overall plan as envisaged by those incredible gentlemen whose vision extended not only to a design for a new kind of government in which liberty and democracy could flourish, but also to the physical environment in which the seat of government could be reflected and symbolized.

As is well known, later political considerations caused the retrocession 55 years later, on July 9, 1846, of the land on the Virginia side, thus laying the basis for what is now the unfortunate visual despoliation of the magnificent view down the mall toward the Washington Monument and Jefferson Memorial by the ugly backdrop of the symbols of man's selfishness and greed as evidenced by the highrise building litter in Rosslyn.

Early efforts to prevent such a travesty were defeated by the jurisdictional lines that were established without consideration for the preservation of the beauty for which the monumental area of our capital is known. It is an illustration, Mr. Chairman, of how thoughtlessness and lack of sensitivity can result in permanent damage to man's opportunity to enjoy his physical environment and, in this case, the symbols of his government.

And now we are faced with an even greater threat: the beginning of a program to surround the capital with New York type skyscrapers. For we should make no mistake about it: the ingenuity and competitiveness of private developers, together with the incentives for profit, all of which are desirable characteristics when properly placed, will, if not controlled, proceed with unbridled force to overwhelm the community. The examples are too numerous and too well known to mention.

That is not to say that such conduct is necessarily bad in and of itself. On the contrary, it has helped to build wealth and prosperity in our Nation. But when such conduct conflicts with other more compelling goals, some controls must be effected. The concept of zoning in urban areas is an obvious example of the kinds of controls that our society has felt necessary.

But there is an economic factor to be considered. It is often said, particularly in urban areas, that taller buildings are needed because it is not economical to build them smaller. What is meant is that many square feet of building area are needed in order to amortize high land costs. Obviously, a one-story building is economical if the land is free. We thus find ourselves having to resist the pressures brought to bear on our built environment by the land speculators. If a developer pays too much for the land, he asks for excessive area within the structure which he says is otherwise uneconomical to build. And if he can get an excess of area beyond what is necessary even for that, he has a windfall. The continuing pressures, Mr. Chairman, to increase the congressionally-imposed 1910 limitation on the height of buildings in the District of Columbia is a corroborative example of that approach.

There are, of course, other reasons, equally as flawed, that are offered by developers as indications of the necessity for the goals they are trying to achieve. The real question is what is the most compelling reason for judgment in terms of the true benefits to society—all society that is affected by the decision. In this instance the local community is said to believe that its financial needs are greater than those of the Federal interest in preserving the vistas from the capital for this and future generations of Americans. As a result, the issue is said to be joined as a local interest-Federal interest question. Surely it cannot be that the parochial interests of the local community are not well answered by the remainder of the development or by the riverfront site development together with several smaller buildings on the skyscraper site that would not intrude on the sensitivities of their fellow citizens.

But these tend to be contrary points of view that lead to opposing points of view and so on, ad infinitum. The real issue is one of beauty or rather the destruction of beauty. The often-quoted expression about the eye of the beholder is perhaps adequate for temporal matters, but vision and wisdom must be added when one is concerned with the ages.

What would the city be like if the mosquito-laden canal and swamp that existed on the mall site had not been replaced by the McMillan design that you mentioned and that we now enjoy? What would the city be like if the Virginia land had not been retroceded in 1846? What would the city be like if it had been permitted to grow helter-skelter without the plan that L'Enfant created under the direction of those great visionaries Washington and Jefferson? What will the city be like if it becomes surrounded by highrise structures of whatever design?

In my judgment the bill introduced in the Senate, S. 2537, is not only a valid and proper exercise of the power vested in the Congress by the Constitution to protect the Federal interest, but is indeed a minimal, if any, interference in local matters. The developer, if he wishes, may still build his building, a condition which, in my opinion, should be prevented by more positive means.

I personally would not trade dollars for the long-term adverse effects that development such as this will have on the urban design characteristics of the Nation's capital. But it appears to be one of the few avenues open for that protection to occur at all, and, therefore, I believe that the enactment of the bill into law will be a major benefit to the entire community of American people.

Thank you, Mr. Chairman.

Senator MOYNIHAN. Thank you, Mr. Architect.

I'd like to hear each of our panel in sequence before making brief comments, but with regard to your special relationship to the Congress and your special responsibility, may I just particularly thank you for pointing out that the existence of the city and its central contours is in the Constitution. There was constitutional intent about where this place would be and what it should not be like, and what it should not be like is a New York City, or they probably would have paused 10 years in Philadelphia en route to its setting and its purpose, which was to state a Jeffersonian intention about government rather than a Hamiltonian one. Hamilton got his return which was when the Federal Government assumed the debt incurred by the States during the Civil War, and a great many of his friends got rich as a consequence.

But, more importantly, the Federal Government was shown to have some use against the devisive policies that would have resulted had States been left to pay off the wide disparate levels of debt they incurred.

I mean there was a constitutional responsibility here, and we mean to pursue it if we have guidance from you, particularly you, sir, in how to do it.

Now for our next witness, our distinguished friend and chairman—are you chairman of the Fine Arts Commission, Carter? You are? Carter Brown, chairman of the Fine Arts Commission, among other things.

STATEMENT OF J. CARTER BROWN, CHAIRMAN, D.C. FINE ARTS COMMISSION

Mr. BROWN. Thank you, Senator.

I assume that is the hat I am here under. I'm not going to concern myself with air traffic safety except as a citizen. It only stands to reason that these are questions of degree, and there are only increments of risk, and the higher it goes, the less safety there is, whatever any expert witnesses are asked to say.

My capacity as Chairman of the Fine Arts Commission, I think, helps make my testimony relevant. I'm entering my 16th year in this capacity. I've been appointed by four Presidents. It's a bipartisan undertaking. Meeting every month as we do, year in and year out, I have had an opportunity to see the tricks that architects play, the way they can slant their visuals, and some of their underlying motivations, and I would like to address some of these.

My Commission is unanimous in their feelings about this project.

I would like to submit our prepared statement for the record. I feel that the tower of the PortAmerica project is the greatest single threat to the visual and symbolic integrity of our Nation's Capital that I have seen proposed in my decade and a half on the Commission. It is not to be taken lightly.

The greatness of the architect is interesting, but doesn't necessarily guarantee the greatness of this particular design in that place. In the well-known phrase, "doctors bury their mistakes but architects build them." We're going to have to live with this for a long time.

I believe esthetically it is a disaster. Even within its own terms within the project—because the project is beautiful, everyone loves the port, but that tower there kills off the human scale of the port. It's modeled on Bath; imagine the reactions of the citizens of Bath, England, if someone imposed a gigantic tower of this proportion on their view.

I'm just back from Florence, the birthplace of humanism, and there they have been able to hold the line, and the topographic bowl around Florence is still green and nothing interferes with Brunelleschi's great dome and Giotto's great tower.

One of the reasons you go to name architects like Johnson and Burgee is so that they can design the quality in without having to beat people over the head with exaggerated scale.

Paris is not an analogy. La Défense is down the hill from the Étoile and many more miles from the monumental core. You don't see it from the Elysée Palace, from Notre Dame, or from the Louvre. That's why they can get away with it.

An accent would be possible, a marker would be possible without having to ape a vertical monument. You have seen that done successfully. You've seen it in Versailles and Marly and Thomas Jefferson's great University of Virginia. I think this architect is up to designing the quality that we all need without impacting on our precious Capitol.

Now it all comes down, therefore, to the impact. I believe that it will be an intrusion of great annoyance, and I simply take exception to these very misleading visuals which the architect has submitted.

It is only common sense—you just have to drive across the Woodrow Wilson Bridge and look back, as I have done, and see the view of the Washington Monument from that distance to get an absolutely concrete mockup of what the scale of the Washington Monument is from that distance away. Then you can extrapolate. You add 135 feet; you multiply the volume by 10 times; and you know what you're going to see. It's the same distance away as you drive up the New Jersey Turnpike past the Newark Airport and you look at the towers of Manhattan. You will see it. It will be a presence.

I agree with John Burgee about the tricks of visual perception. Photographs do mislead us. We see with binocular vision. We make adjustments for spatial distances. But we are not misled by things near seeming larger. We know that the things far away are as large as they are. We know that an object that distance away is going to be a threat to the preeminence of the Washington Monument. We will see it from the bridges as we enter in. We will see it from the terrace of the Kennedy Center. We will see it from all of Arlington Cemetery, from the most precious spot of all, which is Major L'Enfant's grave, one place you can get a perception of the brilliance of his design of the city—you will have this finger sticking up reminding you of our inability as a nation to keep our priorities straight.

Why do they persist in this? Well, the developer has the power to demand a redesign. He doesn't want to use it because he says it's the architect's fault. Why does the architect resist? In a forum at Harvard, Philip Johnson recently commented, a forum on monumentality in the city, "There's only one duty we have as architects, and that is to build monuments. To me, it is as natural as eating or sex. It may be more fun than eating." Philip is always quotable.

In reply to a noted architecture critic who asked about his preservationist view of the scale of a project in New York, Philip always has a quip. He said, "I am a whore."

In the NCPC hearings recently he referred to the experience of entering Washington as the experience of "me, the Masons, and George Washington, God bless him."

Realistically it isn't all ego. There's a lot of economics here. Architects hit a bad patch in the seventies. Some of them found that highrises were money machines. You design a typical floor; you multiply it as many times as you can get away with; you get paid as a percentage of the whole project; and you cry all the way to the bank.

Therefore, what we have here is tremendous pressure to build a building which is grossly overscaled. It doesn't have to be that big. As a matter of fact, it doesn't have to be vertical at all.

Prince Georges County is obviously excited by this. This is the big time, bigger than the Capitol, bigger than the Congress, bigger than George Washington. Why shouldn't they if the law allows them?

And there's a loophole. The distance of this project from Washington is far closer than we have been led to believe. Already there is a factual mistake. It's 6.8 miles from the Washington Monument, not 7.4. What we have here is a ripoff.

I would like to show a map, if I could, of why. Historically, when the Founding Fathers were conceiving of this Federal Capital, they never could have perceived of the automobile, of the highrise technology that would impinge on the sacred character of the monumental core.

The distance away, as you can see—if Major L'Enfant had simply used a compass instead of a T-square—which made it easier for the surveyers of those days—you will find that the PortAmerica tower is closer to the monumental core than certain parts of the District of Columbia. It would have been in the District of Columbia, and thus covered by the height limitation law, simply if that circular concept which was the motivating concept had been the drafting one.

By their own literature, we know that they do not associate themselves with Prince Georges County. This is the great irony. Read their own brochure:

> The World Trade Center, Washington; a world trade center in the Nation's Capital, nerve center for U.S. trade policy and trade negotiations as directed and decided by the administration and Congress, focal point for hundreds of international trade and investment incentive programs overseen by the U.S. Departments of Commerce and Agriculture, the Office of the U.S. Trade Representative, the Export-Import Bank, the Agency for International Development, the Overseas Private Investment Corporation, the Small Business Administration, the U.S. Trade and Development Program, and other agencies. Cosmopolitan world capital, headquarters for the World Bank, the International Monetary Fund, the Inter-American Development Bank, and home to the largest diplomatic community in the world; seat of the U.S. Congress.

This is Washington. This is the Capital. We all have it as the sacred symbol of our nationhood. I feel it should not be spoiled.

Senator MOYNIHAN. Thank you.

Now, Mr. Griffith. Reginald Griffith, the executive director of the National Capital Planning Commission.

STATEMENT OF REGINALD GRIFFITH, EXECUTIVE DIRECTOR, NATIONAL CAPITAL PLANNING COMMISSION

Mr. GRIFFITH. Senator Moynihan, thank you for the invitation to speak on this critically important issue. I have submitted, for the record, responses to the specific questions the committee asked be addressed. With your indulgence, I would like to summarize the Commission's views on the PortAmerica project, and focus on the one aspect that we believe must be changed.

As the central planning agency for the Federal Government in the National Capital Region, the Commission has had longstanding interest in the Potomac River and its surroundings. With respect to Smoot Bay, these interests include in the nearby environment Mount Vernon Memorial Highway, the other Federal park lands along the Virginia and Maryland shores, Oxon Hill Manor, historic Alexandria, and the river flood plains, wetlands, and bluffs. In a broader, regional scale, Federal interest also includes the overall horizontal character of the skyline of the Nation's Capital.

In 1985 the commission executed a Memorandum of Understanding with James Lewis, the developer of the PortAmerica site. The purpose of the memorandum, which only covered development of the waterfront parcel, was to maintain the financial and architectural flexibility of Mr. Lewis' project while assuring the Commission that the land would be developed with regard to the Federal interests along the shoreline of the Potomac.

Mr. Lewis and his architects continued to work cooperatively with the commission during the preparation of plans for the waterfront development, and in our view the general character of the waterfront proposal is commendable, particularly with respect to the sensitivity of design to its unique setting as this gateway to the National Capital.

The overall proposal for the waterfront reflects the intended objectives of the memorandum by providing for relatively low-scale development and accommodating public access to and along the river.

Given our positive working relationship with Mr. Lewis regarding the planning for the waterfront parcel, we were surprised to learn through a newspaper article approximately a year ago that he was planning to construct a 52-story office tower. Since then the Commission has met with Mr. Lewis on several occasions to get his views on the development and to relate its belief that this proposed tower would have unacceptable, adverse impacts on both its immediate environment and on the larger regional setting of the National Capital.

The Commission has also stated its opposition to the 52 story tower directly to Mr. Lewis and his architects at its January 9, 1986 executive session of the Commission, at public hearings held by the Prince Georges County Planning Board and the Prince Georges County Council in May and July of this year.

Mr. Lewis has recently advised the Commission that he is reducing the tower from 52 stories to 42, lowering the height to 629 feet above ground level, a reduction of approximately 120 feet.

Now Mr. Burgee mentioned lowering the building by 171 feet. There was a 50- or 51-foot spire on top of the building; that has been taken off. The actual building is only being lowered by 120 feet.

Our staff analysis indicates that the reduced height of the proposed tower does not significantly change its adverse regional and aesthetic impacts on its immediate environment along the Potomac River or on the monumental core. Tall buildings have already been built in this region. This 42- story structure would constitute an entirely new scale of height, an unprecedented intrusion on the National Capital skyline, and would damage the historic forms in the heart of the city in a way that the existing lower generations of tall buildings have not.

The tower would greatly diminish the overall quality of the skyline and the visual dominance of its major monuments, and memorials including the U.S. Capitol and the Washington Monument, which symbolize the United States throughout the world.

These symbols of the Nation which have dominated and formed the image of the regional skyline for over a century would be relegated to a second class level of importance by the proposed tower with its larger mass and competing form, some 135 feet higher than the Washington Monument.

In its more immediate setting, the tower would also have serious adverse impacts on the land along the river in and around the PortAmerica site. A 630-foot-high building would overwhelm the scale of the wooded bluff on which it is to be set and irretrievably change the natural character and the enframing ridge along the east side of the river. This natural enfroming ridge has prevailed throughout the development of the National Capital.

Oxon Cove Park, Oxon Hill Manor, the Mount Vernon Memorial Highway and historic Alexandria across the river would also be overshadowed by the looming tower so totally out of scale with all other nearby forms.

Because of the impacts of the tower on both its larger regional setting and its more immediate environment, the commission believes that building heights of 11 to 17 stories—that is, 130 to 200 feet—with architectural embellishments such as roofs, spires, and domes of not more than an additional 75 feet, would appear to be most acceptable for the beltway parcel.

Given the elevation of the site, the height range suggested by our Commission would result in intrusions on the skyline generally consistent in scale with existing buildings' intrusions on the skyline now visible from the monument area.

We are convinced that a complex containing the same intensity of development and including the world trade center functions, other office buildings, a hotel, and supporting uses on the magnificent PortAmerica site can be designed as a distinctive signature development without a 42-story tower building. Indeed, in our view replacing the proposed 630-foot high tower with a much lower building presents no economic hardship and will not only mitigate the adverse impacts on the surrounding environment, but also complement the outstanding design quality and character of the waterfront parcel.

Senator MOYNIHAN. Mr. Griffith, at noon we commence to be only quasi-legal in our hearing. Could you just wrap up, and we will come back to you with your slides?

Mr. GRIFFITH. Certainly.

Mr. Chairman, might I in wrapping up show slides?

Senator MOYNIHAN. Please do.

Mr. GRIFFTH. Thank you.

Senator MOYNIHAN. It requires unanimous consent for committees to meet in the afternoon. Nobody knows we're meeting.

Mr. GRIFFITH. At this point I'd like to direct your attention to a sightline map and six poster-size photographs which are in the slide presentation, and we will use the slides rather than the other exhibits.

This is a sightline plan showing the immediate and extended area from the monumental core to the PortAmerica project. The site of the PortAmerican project is in the lower righthand corner of the slide. The beltway parcel, in particular, is that elongated portion shaded in gray near the Interstate 95.

Senator MOYNIHAN. Yes.

Mr. GRIFFITH. This is slide No. 1 taken from the Virginia shore, across the river from the PortAmerica site, in the Belle Haven picnic area along the Mt. Vernon Memorial Park.

This is what the building would look like. That is, the World Trade Center development portion of it.

No. 2; this is a view from the old torpedo plant site on the Alexandria waterfront near King Street. No. 3; this is how we would see the beltway parcel with the World Trade Center from the tower at the Washington National Airport. Although the airport tower is not open to the public, this slide illustrates how close the runways of National are to the proposed PortAmerica site.

No. 4; this picture was taken from the top of the Washington Monument, visited by millions of people each year. You will note the Jefferson Memorial in the lower righthand corner.

And we have No. 5; this slide shows the tower and its related buildings from the upper terrace of the Kennedy Center where the restaurants are, and again where millions of people are during the year.

No. 6; this is from the Truman balcony of the White House, . . . and this is comparable to the slide shown by the architect. You will note how the proposed tower would look on the left of the monument; the Jefferson Memorial is on the right.

Now, J. Carter Brown mentioned the drive across the Woodrow Wilson Bridge. Those of us who are familiar with that drive know that the Washington Monument shows up prominently. However, Mr. Burgee is absolutely right—the camera is not like the eye. The eye, in fact, is much more sensitive, flexible, and adaptable—much more so than a 50-millimeter camera lens.

While we know that the Washington Monument shows up prominently when looking at it from the Woodrow Wilson Bridge, the camera's image from the Woodrow Wilson Bridge shows the Washington Monument in a barely discernible way. We who have crossed that bridge time upon time know that the monument is much more prominent than that, and that gives you some idea of how much more we will really see with the human eye.

If we superimpose upon what the tower would look like on that same Washington Monument site, the real impact—what I'm saying is the impact of the tower—at the distance, we will see it from the Mall, will be stronger than what this camera image shows because we know the strength of the Washington Monument itself.

Mr. Chairman, that summarizes my report. If the committee were to identify areas of inadequacy in the present NEPA process—and certainly the staff of the 10 other Federal agencies that we have met with identified some inadequacies—I am certain that the National Capital Planning Commission would be pleased to participate with the committee in its effort to improve the environmental review process.

Thank you.

Senator MOYNIHAN. We thank you, Mr. Griffith, and you shall be hearing from us.

Mr. Alan Hill is chairman of the Council on Environmental Quality.

I am going to have to ask that we all, out of courtesy to the other witnesses, keep to our 5 minutes, else I will have no choice but to say we can't violate the rules of the Senate any longer.

Will you tell us at the outset what your legal bearing—what powers your body has with respect to the matter before us?

STATEMENT OF ALAN HILL, CHAIRMAN, COUNCIL ON ENVIRONMENTAL QUALITY

Mr. Hill. Yes, Mr. Chairman. The committee in its letter to me asked six questions. The shortened version of my testimony touches on the answers to those which bear directly on the question you're asking.

It's a pleasure to be here today. As you know, the Council on Environmental Quality was established by the National Environmental Policy Act of 1970 or, as we call it, NEPA. One of its primary responsibilities is oversight of the NEPA process. NEPA has two primary purposes, Mr. Chairman: First, to insure that a Federal decisionmaker considers the potential environmental impacts of his or her action; and, second, to provide a means by which the public is informed and can participate in the evaluation of the environmental impacts of a proposal.

In section 102 of NEPA agencies are directed to prepare a detailed statement to accompany every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

As I said, my full statement includes more detail, but let me move now to answer the questions asked by the committee.

The first question: The statutory responsibility of the Council on Environmental Quality specifically with respect to the PortAmerica project.

The council's statutory responsibilities are in general terms oversight of the environmental impact assessment process as it is implemented on a generic basis by all Federal agencies as opposed to a specific role in the preparation of individual environmental impact statements or in the decisionmaking process about particular projects.

Second: The specific CEQ approval-disapproval authority affecting the project.

CEQ has no approval authority over any aspect of the proposed PortAmerica project.

The third question: Coordination with other Federal agencies.

CEQ's role in the proposed PortAmerica project has and will occur only upon request from an interested party—usually one of the involved Federal agencies.

Fourth, CEQ's actions and applicable processes thus far regarding PortAmerica.

To date, CEQ's actions regarding the PortAmerica process have involved informal consultations, principally between the staffs of CEQ and the National Capital Planning Commission.

In April the general counsel of CEQ received a letter from Mr. Griffith in his capacity as executive director of the NCPC asking for informal views on this project. Specifically, the letter asked for thoughts regarding good candidates for the lead agency designation, on the scope of a consolidated environmental document, on the level of commitment required from involved agencies, and other related questions. The general counsel's response to that letter contains a detailed discussion regarding those issues. I have attached a copy of that correspondence for the record.

Fifth, the opportunity for public participation and review.

The CEQ regulations require Federal agencies to provide for extensive public participation during the environmental impact assessment process.

In all cases the regulations require that Federal agencies provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

If an agency is preparing an EIS, it must involve the public in the scoping process prior to the publication of the draft EIS and provide for a public comment period on the draft EIS.

Finally, the sixth question that was asked: Timetable for additional CEQ procedures as they affect the PortAmerica project.

As mentioned earlier, CEQ's involvement in the NEPA process for a specific proposed action is triggered by a request from a party which is involved in that particular proposal.

Besides our role in informal consultation, we have two specific times when CEQ may be asked formally to be involved; that is, first of all, the question of determination of a lead agency.

Yesterday we received such a request from the National Capital Planning Commission with respect to the PortAmerica proposal, and we will provide that request along with agency comments for the record.

The other case is during predecisional referrals when the council would have a question referred to it by other Federal agencies for determination.

That, Mr. Chairman, concludes my testimony. I'm available for questions.

Senator MOYNIHAN. Thank you. Very concise and right on time. That speaks well of the council and its chairman.

Assistant Secretary Recce for Fish, Wildlife and Parks of the Department of the Interior. We welcome you.

STATEMENT OF SUSAN RECCE, DEPUTY ASSISTANT SECRETARY FOR FISH, WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR

Ms. RECCE. Thank you, Senator Moynihan. I am Deputy Assistant Secretary. I don't want my boss to get concerned with what I was doing today.

I'm pleased to be here today to discuss the PortAmerica project with you. The Department of the Interior has been very interested in this project since its inception in 1981 and has participated numerous times in the hearing processes held at the Federal and local levels over the past 5 years.

The magnificent site for the project is a major gateway to the State of Maryland when approaching from the south and is a neighbor to several National Park Service-managed areas including Ft. Foote, the Oxon Hill Children's Farm, and the Mt. Vernon Memorial Highway.

It was only after being assured that the developer was committed to development which will complement the Federal interest of suitable building heights and density in the area that we agreed not to object to the transfer of 55 acres of National Park Service lands under specific conditions to the Maryland and National Capital

Park and Planning Commission in order to provide the critically-needed access to the waterfront portion of the PortAmerica project.

In good faith the Park Service and NCPC spent many months working with the developer to incorporate mutually agreed-upon conditions that would allow for the Federal interest to be protected while assuring that the economic viability of the project was maintained. We feel that from this effort a good balance of interest was achieved through the 1985 Memorandum of Understanding with NCPC. We feel the project proposed for the waterfront parcel is acceptable, and we have no objection to appropriate commercial development of the beltway parcel.

However, we are concerned about any highrise skyscrapers such as that proposed in this area which would impact visually on the Federal interests as defined in the memorandum of understanding. For that reason, we are opposed to the 42- story office building now being proposed and we firmly believe that this building will have a permanent, irrevocable, and extremely negative impact on the Federal interest of our Nation's capital and the area of the river below the city.

The tower is totally out of scale with its surrounding environment and is not a unifying element for the rest of the otherwise appropriate architectural style proposed for the waterfront tract. The remainder of the development has been designed to take advantage of the location and natural features existing at the site in a harmonious way, but the towering structure stands in isolation and stark contrast to its surroundings, totally overpowering them in height and scale.

In that the developer added this tower to his plans and violated the spirit and intent of the memorandum of understanding and the legislation, we have indicated a reluctance to grant access to it. In response to this, the Maryland National Capital Park and Planning Commission is challenging through litigation our interpretation of the act. As you can appreciate, we cannot comment on the issues that are now in litigation.

But I would like to respond very briefly to the questions that you had asked of us. The first related to our statutory responsibility. Let me say that the National Park Service's involvement in the project is limited to implementation of a portion of the requirements of Public Law 99-215. That portion which impacts the Park Service is the section authorizing and directing the Secretary of the Interior to transfer 55 acres of Federal park land to the Maryland National Capital Park and Planning Commission. We do not believe that the provisions of the National Environmental Policy Act apply to this action.

The Fish and Wildlife Service has concerns over the impact that filling of wetlands surrounding a portion of Smoot Cove will have on the environment, and this concern will be dealt with in the Corps of Engineers permitting process.

Although we have no legal authority to approve or disapprove the PortAmerica project as a whole, once the impact to wetlands has been clearly determined by the Fish and Wildlife Service, our comments in this area could certainly impact the design of the project.

We have, at the invitation of the National Capital Planning Commission, attended two sessions held with all Federal agencies which may be impacted by the project to discuss our concerns on how best to address them.

Let me say, at least at this moment, we feel that with our limited interest that we do not believe the Park Service should be designated as the lead agency.

In addition to our longstanding involvement, we have assisted in conducting a visual impacts analysis, and with regard to the transfer of the 55 acres, we have already transmitted the draft deeds to the Maryland National Capital Park Planning Commission. That was done on July 3 of this year. We are waiting for the developer to apply for the permits necessary for filling Smoot Cove. Hence, our time of response is awaiting his future actions.

I hope this has been responsive to the questions that were raised in the letter to us, and we would be pleased to answer any others you may have.

Senator MOYNIHAN. It surely has. Let me quickly ask about a couple of things.

Can I ask Carter Brown—this wonderful circle you've developed here, what exactly is the geometry of that? You haven't squared the circle. You seemed to have nipped off a few in the northwest angle there. You've used a radius the length of which corresponds to the side of the square or——

Mr. BROWN. Well, I think it was intended to be the exact center and probably didn't come out that way. The point is made very graphically either way, which is that the distance of the PortAmerica tower from the Washington Monument, for example, is closer than certain points that are within the District according to L'Enfant's original plan, which means that this is not a county to hell and gone off someplace on its own. This is part of the National Capital area. As a matter of fact, Senator, if you look at any road map—and I brought one with me—it shows in yellow what the actual city area is. Of course, L'Enfant's lines are well within it, and one has to recognize that reality in any of these environmental issues.

Senator MOYNIHAN. I have one very specific question and I guess I'll direct it to Mr. Hill. You were asked about your thoughts regarding good candidates for the lead agency designation on the scope of a consolidated environmental document. Where is that? What's happening? Who asked for it? Does Mr. Griffith ask for it? What's it add up to? What can it do or not do?

Mr. HILL. We have had a request that was received yesterday afternoon from the National Capital Planning Commission to make such a designation. I haven't read the details to it.

Senator MOYNIHAN. Do you normally designate? Is that part of your job?

Mr. HILL. That is one of the——

Senator MOYNIHAN. You say you can do it?

Mr. HILL. Yes, that's where the buck stops in this case.

Senator MOYNIHAN. Right. Well, who are you going to designate? You are going to?

Mr. HILL. I haven't read the letters myself, and I hesitate to say exactly right now.

Senator Moynihan. But someone will, and will this be ready by next May?

Mr. Hill. The way the regulations work is NCPC has made a request. We must notify the other Federal agencies that would be affected. They have 20 days in which to reply. Then the council has 20 days in which to make a decision.

Senator Moynihan. But who can't do what until there is an environmental impact statement?

Mr. Hill. That's the major question, Senator.

Will there be an environmental impact statement? I personally believe there should be an environmental impact statement.

Senator Moynihan. Who will decide whether there should be?

Mr. Hill. We will be encouraging the participating agencies to enter into an agreement to prepare an EIS.

Senator Moynihan. God have mercy. Mostly you can't prevent them. What is this business about encouraging them?

Mr. Hill. We have a case of several Federal agencies having what they consider a minor interest in the EIS. Each of these minor interests, however, have a cumulative effect. The Corps of Engineers must issue a permit.

Senator Moynihan. Issue that planning thing?

Mr. Hill. That's right. The Fish and Wildlife Service must be considered about wetlands. The National Marine Fisheries Service is involved. The National Park Service is involved.

Senator Moynihan. Is the FAA involved?

Mr. Hill. The FAA is involved.

Senator Moynihan. Right.

Mr. Hill. The Federal Highway Administration is involved.

Senator Moynihan. OK, I've got you. Look, the National Environmental Policy Act, does it specifically extend to esthetic consideration?

Mr. Hill. Yes, Senator, esthetics is specifically mentioned in the statute.

Senator Moynihan. Could you give this committee—and we should be much appreciative—a memorandum of the previous implementation of that provision in the act, of how you've used it in the past if you've used it in the past?

Mr. Hill. We'll have to check the record. We'll provide what we have, yes.

Senator Moynihan. Would you do that fairly promptly?

Mr. Hill. Yes. (See p. 132.)

Senator Moynihan. Just something that's case history in effect. I'd like to know what is esthetic. Carter Brown knows things like that, but I don't necessarily.

Senator Moynihan. George White, are you an agency? No, you're not.

Mr. White. No; we're not an executive branch agency.

Senator Moynihan. Any circumstance will allow them to answer their mail, and that's better than a Constitution distinction.

Mr. Chairman, you let us know what's going on with respect to this environmental statement; right?

Mr. Hill. Yes, indeed.

Senator Moynihan. We will know from you what has worked out.

I'd like to get that memorandum. I have a very strong statement from the Fine Arts Commission, from you, sir, Mr. White. I'm glad to know that you're involved in this.

Has this land been transferred? That's over? That's behind us?

Ms. RECCE. The draft deeds are submitted, but, no, it has not been concluded.

Senator MOYNIHAN. Wait, wait, wait. "Draft deeds," no, that's not happened.

Ms. RECCE. The draft deeds have been submitted, but as far as actually——

Senator MOYNIHAN. Submitted to——

Ms. RECCE. To the Maryland Park and Planning Commission. As I understand it, the actual transfer has not been concluded.

Senator MOYNIHAN. OK. Whose draft deeds? You have given them a deed. You give us a memorandum in 48 hours about the status of that deed. Would you do that?

Ms. RECCE. I certainly will. Yes, sir. (See p. 148.)

Senator MOYNIHAN. I know the chairman will be very much appreciative. There's a fact out there and you can find it in the next half hour and get it up here at the end of the day.

Whatever we decide, we don't want to have our decision preempted by the fact that the time ran out on us and we didn't know the clock was running and then suddenly we're precluded from any choice we might want to make.

We've now heard from the developers. We've heard from the government agencies, rather uniformly negative comments from the Government, Mr. White speaking for the Congress as the Architect.

We're now going to hear from a group of interested citizens in various levels of positions and with various views.

We thank this panel very much, indeed. I'm going to ask Mr. Christopher Duerksen, who is the senior associate of the Conservation Foundation; Mr. John Fowler, who's acting executive director of the National Advisory Council on Historic Preservation; Mr. J. Jackson Walter, president of the National Trust for Historic Preservation; Mr. John Rhoads, chairman of the Prince Georges County Planning Board; and Mr. Robert Peck, president of the Preservation League—we'll want to get your—I'm going to reverse that order, if I may. My good, personal friend, Bob Peck, is here at the end of this list, but I'm going to put him next to the end. So, Mr. Rhoads who will be speaking for the whole—for the advocates here will be able to wrap up. We want to give him his free opportunity.

So, Mr. Duerksen, you are first on the list. Please go ahead.

As I understand, you can speak to us about the Government's responsibility here.

STATEMENT OF CHRISTOPHER J. DUERKSEN, SENIOR ASSOCIATE, THE CONSERVATION FOUNDATION

Mr. DUERKSEN. Yes, sir.

Senator MOYNIHAN. That's something we need to know.

Mr. DUERKSEN. For the record, my name is Christopher J. Duerksen. I'm a lawyer and a senior associate of the Conservation Foundation here in Washington where I specialize in land use and development law. I'm also the immediate past Chair of the American

Bar Association's Committee on Land Use, Planning, and Zoning. I currently serve as an elected member of the Fredericksburg, VA, city council which we modestly call "America's most historic city."

I do appreciate the opportunity to testify on this issue. As I said, my analysis is going to be directed at the broader legal question of what power Congress has beyond existing laws to regulate private development that has an adverse visual and aesthetic impact on the capital and its environs.

The first question, the first issue is generally, What power do governments have to regulate based solely on aesthetic considerations? I'm currently working on a book entitled, "Successful Communities: How They Are Making America More Livable." I found in this work across the United States a growing concern not only about the ecological and economic impacts of development, but also with design and aesthetics.

State governments and local governments are coming to recognize that they must go beyond ecology and economics in land planning to ensure quality development.

Local governments are really getting into this picture. In Austin, TX, for example, they share the same concern over the Texas State capitol building that the Senate shares over the impact of this project. There the city council recently passed strong new controls on highrise development throughout the community to protect the view of the State capitol from important vantage points such as public parks. I might add that the Texas State capitol is an exact replica of the Nation's capitol, I'm told, but it's 1 foot taller.

Denver has done the same thing. They have passed height controls on buildings around the——

Senator **Moynihan**. Their monument at the Battle of San Jacinto is a foot taller than the Washington Monument.

Mr. **Duerksen**. That's right. True Texas style.

Denver has done the same thing to protect its State capitol, and that ordinance has recently been upheld by a local court despite serious economic impact on one landowner.

I'm sure Congressman Hoyer, having mentioned San Francisco, is aware that some of those big buildings that he showed have given rise to a citizens' revolt and imposition of some very new, strong controls and tight controls, design controls on boxy-style-type highrises in San Francisco. So the PortAmerica project probably couldn't be built in San Francisco today.

The courts, I might add, have been very supportive of these efforts. In fact, the U.S. Supreme Court has made clear in a number of contexts that land use regulations, and I quote, "designed to preserve the character and desirable aesthetic features of a city are entirely proper under the U.S. Constitution."

Well, now, what power does Congress have, then, to exercise this interest to protect the aesthetic character of a city? My research has been directed at two particular sources of this power: the property clause and the commerce clause.

The property clause is an important source of authority for the Federal Government to manage and protect Federal land. This is article 4, section 3, clause 2 of the Constitution: "The Congress shall have power to make all needful rules and regulations respecting the territory or other property belonging to the United States."

Courts have interpreted this authority under the property clause to be very similar to the police power authority that local governments use when they enact land use regulations. I'm not going to bore anyone with detailed legal citations. They're in the testimony submitted for the record. But suffice it to say that the courts have made it very clear that the Federal Government can control development or actions on private property that affect or imperil federally-owned property. These cases go back to the early 1900's. In one case of particular note, the Supreme Court held that Congress could prohibit fires on land adjacent to Federal forest land because it might imperil the Federal interest.

Recent court cases expanded this authority under the property clause fairly dramatically, and now we all understand that the Congress has power not only to protect Federal property, but to protect and promote the purposes for which that property has been designated or set aside. That's a very important point I think, which I will touch on in a second.

So I think there is very little doubt that under the property clause Congress has ample authority to protect scenic roadways, national historic monuments, and so forth.

The commerce clause I think gives even more authority to Congress to regulate for aesthetic purposes in a context such as we have here. The commerce clause says simply Congress has the power to regulate commerce with foreign nations, among the several States, and with Indian tribes.

Here is a quick summary by one legal commentator of what the commerce clause has to say to us in this context:

> Federal legislation under the commerce clause will be upheld even if it invades the traditional subject matter of local police power legislation. Congress may also exercise its commerce power for purposes unrelated to commerce per se."

Then he goes on to note that all Federal environmental laws have invoked the commerce clause.

Also, Congress has in numerous instances exercised land use regulatory powers based on the property clause and the commerce clause. I'm just going to give you a few examples because it's not all that unusual.

First of all, Congress has enacted sweeping controls on surface mining including the prohibition of development having an adverse impact on properties listed in the National Register of Historic Places. These controls have been upheld in the U.S. Supreme Court.

Congress has granted the National Park Service authority over local zoning regulations in establishing several national seashores, one in your jurisdiction Senator Moynihan—Fire Island, NY, and other units of the National Park System.

Of particular note, Congress recently gave the National Park Service power to regulate private development outside the Redwood National Park that has an adverse impact on resources in the park.

Finally, the Federal Communications Commission recently preempted all local esthetic restrictions on satellite dishes based on the FCC's mandate to promote communications nationwide. I can tell you this is going to make it very difficult for local governments to keep satellite dishes off the roofs of historic buildings in places like Fredericksburg, but in its wisdom the FCC took that action.

I think, based on all of these precedents, it's clear to me that under either the property clause or the commerce clause Congress has broad authority to enact laws and regulations that protect Federal lands in the manmade and natural environment of the capitol and its environs from the adverse impacts of development on nearby private lands.

The final question I'll address is whether Congress can justify imposing height limits on buildings near Federal parkland or scenic highways or even 4 or 5 miles away? Would it pose a serious enough threat to justify action? In short, I believe the answer to both questions is clearly yes.

We've already heard some very eloquent and strong testimony about the project's impact. Given these facts, in my mind Congress has ample authority to protect Federal monuments such as the Capitol and the Washington Monument, Federal parklands such as Mount Vernon Memorial Highway, and national historic landmarks such as Mount Vernon from the visual intrusion of any highrise building of the magnitude of PortAmerica, be it 52 or 42 stories tall.

In conclusion, I want to say I don't make these statements lightly, being a local government official myself. I believe that most local land-use decisions should be made by the local governments because it is our citizens who are going to have to live with the results of the project be they good or bad. But when an important Federal interest such as the esthetic well-being of our Nation's capitol is at stake, Congress clearly has the authority to act. These actions must, of course, respect other constitutional guarantees such as the prohibition against the taking of property without just compensation, but I see little danger here of running afoul of these protections because Congress is simply limiting the height of a structure; it is not prohibiting all reasonable use of the land.

Mr. Moynihan. Thank you very much.

Mr. Duerksen. Thank you.

Senator Moynihan. Mr. Fowler.

STATEMENT OF JOHN FOWLER, ACTING EXECUTIVE DIRECTOR, NATIONAL ADVISORY COUNCIL ON HISTORIC PRESERVATION

Mr. Fowler. Thank you, Mr. Chairman.

I should note from the outset that I am here representing the Advisory Council on Historic Preservation which is an independent Federal agency. However, I feel completely comfortable in sitting with private preservationists, since two-thirds of the 19 members of the Council represent the non-Federal sector of historic preservation. Indeed, Mr. Walter, on my left, is one of our prominent members, and George White is also one of our members.

The Council has a statutory charge to advise the President and Congress on historic preservation matters, and more specifically to comment on the impact of Federal actions that affect historic properties. This latter activity is conducted under the authority of section 106 of the National Historic Preservation Act which requires Federal agencies to take into account the effects of their undertakings on National Register and National Register-eligible properties and to afford the Council an opportunity to comment.

At its July 1986 meeting, the Council learned of the PortAmerica project and the potential impacts of the tower on the monumental core of the District of Columbia. The members expressed extreme concern about the visual impacts from the tower, and, in an unprecedented action, they directed the Chairman to express this concern to the President and to the Congress. I'd like to quote several sentences from the letter that was sent to the President and to the Speaker of the House and the President of the Senate:

> We, the Council, believe that the Federal Government has a unique interest in protecting historic visual qualities of our Nation's Capital and its environs which are resources important to the entire Nation. We believe that the Federal Government should do all it can within its power to encourage revision of the PortAmerica tower plans in order to properly consider these historic qualities. The Council is willing to provide its assistance and expertise to achieve this objective.

Council members took a second action at that meeting. They were concerned that the Federal agencies which have some involvement in the PortAmerica project, such as approving licenses and permits for filling marshlands and so on, initiate the section 106 process as soon as possible. The Council directed that letters be sent to the heads of those agencies encouraging them to come to the Council to seek our comments——

Senator MOYNIHAN. Section 106?

Mr. FOWLER. Section 106 of the National Historic Preservation Act—to seek our comments so that the process could be completed and the impacts of the tower fully considered before it was too late.

I have copies of those letters that I would like to submit for the record. (See p. 224.)

Mr. FOWLER. We sent these letters out at the beginning of September. We sent them to the Secretary of the Interior with regard to National Park Service and Fish and Wildlife Service involvement, the National Capital Planning Commission, the Corps of Engineers, and the Federal Highway Administration. To date, we have received no response.

While the Council membership has expressed their concern about the tower, I think there are several important points that need to be made about the Council's role in this and about the Federal historic preservation process in general as it applies to the PortAmerica tower.

First of all, section 106 only gives the Council the authority to comment, not to approve or disapprove Federal action. So if the Corps of Engineers decides that it wants to grant the permit even after considering the impact on historic properties, the Corps of Engineers is free to make that decision.

Second, the process is responsive; that is, an agency must come to the Council and seek the Council's comments before the Council can render its views under section 106. To date, no agency has sought Council comment, although we understand that this will be forthcoming.

When the comments are requested, the process moves forward to seek to identify the impacts on historic properties, seek alternatives to minimize the impacts, and hopefully reach agreement on ways that those impacts can be mitigated or avoided. However, I must stress there is no authority to veto or disapprove a Federal action relating to this project.

So, in summary, the Council members are extremely concerned about this project and its impacts on the Nation's Capital. They are eager to get the section 106 process moving, and they are willing to assist in finding ways to diminish the impacts on these historic properties.

Thank you.

Senator **Moynihan**. Thank you.

I hope someone heard you say that you'd welcome being asked.

Now, sir, Mr. Walter, who is president of the National Trust for Historic Preservation. We welcome you.

STATEMENT OF J. JACKSON WALTER, PRESIDENT, NATIONAL TRUST FOR HISTORIC PRESERVATION

Mr. **Walter**. Thank you, Senator.

As you know, the National Trust was chartered by the Congress in 1949 to be the private sector leader in the national historic preservation movement. We are pleased, of course, to have had you join us in the campaign to save the west front of the Capitol, an exercise that perhaps was as good an exercise as any in pointing out the relationship between citizen movements and our Government and the historic resources of this city.

I also would point to our work with you and other Members of the Congress in saving the rehab tax credits which you saluted a little bit last week in your remarks that I heard at the Willard—those credits did contribute to the restoration of that building.

I was a little amused when Philip Johnson chose to quote my note to him as the test that he chose to adopt for the impact or for the evaluation of this project. He correctly said that the National Trust supports the visual and symbolic preeminence of the landmarks of democracy that make up the monumental core, if you will, of the city, and, therefore, opposes the PortAmerica Tower if it can be shown that that tower diminishes that special quality.

He went on to say that, as a matter of fact, he didn't think it did, but, nonetheless, he adopted the test which I thought opened up and posed the question in as good a way as anyone did this morning.

Thinking about that in light of Congressman Hoyer's remarks about the TransAmerica Tower where the citizens of San Francisco did, in fact, decide that the visual impact of that tower was so substantial that they have, with leadership and assistance from the National Trust, decided to change the law in San Francisco so you couldn't build the TransAmerica Tower today downtown, as Mr. Duerksen has pointed out.

The issue has arisen here about Rosslyn and precedents, and I take it that Rosslyn is, in fact, the precedent. This PortAmerica Tower is not the first time that the horse has tried to get out of the barn. Perhaps, rather, the PortAmerica tower poses the question of whether Mr. White is correct in pointing out that there is now a movement afoot to build a ring of towers around Washington. We've already started that process in Rosslyn and I would hope that we might be able not to continue it.

Certainly none of the historic resources of this Nation are more important than those here in the Capital City, and the key feature is the low-scale of the buildings. That scale is not an accident, and as various people have commented this morning, it was, in fact, the result of congressional action first taken in 1899 and specifically in response to the construction of the Cairo Hotel at 16th and Q whose then unprecedented 165-feet-height shocked Washington.

The Congress got into the business by reinforcing the city councils' passage of a local height limitation law by enacting similar Federal law.

I take it that the issue challenging us here today is really not the design or the worthiness of the PortAmerica Tower, but the effect of its height and mass on the visual and symbolic preeminence of the Capitol and the Washington Monument area.

Congress' 1899 enactment of a building height limitation was not prompted by the criticism of the design of architect Thomas Schneider's Cairo Hotel. Instead, Congress took action in the national interest to protect resources of paramount significance in the Nation's history.

Our recommendation today that Congress supplement its original 1899 action by protecting the Capitol and the Washington Monument area from intrusions outside of the city limits is not a criticism or comment on the PortAmerica tower itself, but a recommendation made on behalf of the national interest in the Capital City's historic landmarks.

The National Trust urges Congress to act swiftly and points out that Federal legislation alone can insure the preservation of these historic resources for future generations. There could be no more appropriate way to commemorate this, the 20th anniversary year of the National Historic Preservation Act enacted by the Congress in 1966. Even more in this, the 199th year of our Constitution, the National Trust for Historic Preservation as the owner of Montpelier, the Orange, Virginia home of James Madison, our fourth President and the Father of the Constitution, is mindful that it was the definition and assertion of the supremacy of the national interest that was the cornerstone of success for our Founding Fathers. To recognize and preserve the pre-eminence of the monumental core of our Nation's capital would be a splendid feature of our constitutional bicentennial celebration.

Thank you, Senator.

Senator MOYNIHAN. Thank you.

Now a very special friend of this committee and a colleague for many years, Robert Peck, who is president of the D.C. Preservation League.

STATEMENT OF ROBERT PECK, PRESIDENT, D.C. PRESERVATION LEAGUE

Mr. PECK. Thank you, Senator. Thank you for asking me to testify. Accustomed as I am to this room, I'm unaccustomed to this role in it.

I am representing this morning, with gratitude for your invitation, the D.C. Preservation League, a private citizens' organization of 1200 members which Jack Walter and the National Trust recognize as the statewide preservation organization for the District of Columbia, we being a city-State.

Senator MOYNIHAN. One subject at a time.

Mr. PECK. We are a citizens' organization that has, nevertheless, bureaucratized itself to the point that we have a board which takes stands on issues. Our board has not yet taken a stance on PortAmerica, so I speak as a preservationist and can't say for sure what my board will say about what I have to say.

I think there are a couple of issues that have come up that I could address briefly. One is that there is a legitimate question on the part of people in Prince Georges County, who have an understandable civic pride in this project and in the development that their county has undergone in the last several years, as to why the Congress and people in downtown Washington are concerned about a development outside the bounds of the District. I would suggest there are a few good reasons.

One is that it is the region that is now central, not just the city. The Constitutional Convention in 1787 was taking quite an expansive view when it set out a 10-mile square district for the Federal City. In fact, until World War I, as you well know, development had barely reached the bottom of the hills which surround the monumental core of the city. It looked like they had been too ambitious for at least 125 years, and they were ridiculed for it by Charles Dickens, among others during that time.

By the early 1950's Congress recognized that development had passed beyond the city limits when it established the National Capital Planning Commission. It was too late by then to expand the District. In fact, as we've discussed, some of the original District had been ceded back to Virginia, a most unfortunate event when you look at Rosslyn.

There is another aspect of the city's growth that is worth noting. The development was naturally bounded for a while by a natural bowl, a topographic bowl in which the city sits. If you start in the northwest where the National Cathedral, and now unfortunately the Soviet Embassy, sit, continue around to the Capitol and to the southeast end—and I intend no editorial comment—to St. Elizabeth's Hospital and Anacostia, you make out a topographic bowl. It is the three-dimensional field on which L'Enfant, Washington, and Jefferson laid out the city. It is that bowl that in large measure makes us notice even more and reinforces the low-lying effect of the Washington skyline.

To some extent, the PortAmerica tower has the unfortunate aspect of violating that natural bound, and in fact eviscerating it visually.

Now if I could change hats. In my new role in the commercial real estate business I heard something very interesting last week at a conference of investors, and I would commend it to the people of Prince Georges and the District, and in fact the Nation.

A number of leading advisors to large pension funds and foreign investors who put a lot of money into commercial real estate said that two of the stronger growth markets in the country for real estate investment right now are Washington and San Francisco precisely because they have stringent growth and development limits. People investing in real estate here know that a property plunked down on a particular site is not going to be overshadowed; that the swings of overbuilding and underbuilding, while they can get a bit out of hand, as they are in this town at the moment, can only go but so far. That is an advantage to us all.

So while the issue here is mainly aesthetic and symbolic, there is an economic side to it, too. The low-lying skyline in Washington has contributed to its economic success, which surely the Founding Fathers also wanted for this city.

I'd finally say that it just seems to me there's a matter here of public and private goods, and it seems to me that it should be for the public's representatives in Congress to decide if Washington needs another vertical punctuation. And I suggest that they make that decision at such time as they find as worthy a justification as a monument to George Washington and not anything less.

Thank you.

Senator MOYNIHAN. Very nicely said. I think that is a point about the city being in a bowl and the consequence of the building heights from 1899 are emphasized, and all the more is the intrusion of something way above.

Yes, I can see the business of the reliability of real estate investment. They must have figured it out by now, but if someone puts up a skyscraper in Manhattan, you have the view for approximately 11 years and then someone puts one up right in front of you.

Mr. PECK. That's right.

Senator MOYNIHAN. You'd better get your money back in 11 years or it's not going to be worth it.

Mr. PECK. Under the old tax bill you could, of course.

Senator MOYNIHAN. Under the old tax bill—that's right. No longer, 29 years, you've got to think about at least a generation.

Gentlemen, we have the pleasure to have with us Mr. John Rhoads, who is the chairman of the Prince George's County Planning Board.

Mr. Rhoads, we welcome you to the committee.

Do you have written testimony, sir?

STATEMENT OF JOHN RHOADS, CHAIRMAN, PRINCE GEORGES COUNTY PLANNING BOARD

Mr. RHOADS. You have it before you, Senator, I believe.

Senator MOYNIHAN. Oh, yes. Thank you.

Mr. RHOADS. It's my pleasure to appear before you.

For the record, my name is John Rhoads and I'm the chairman of the Prince George's County Planning Board and the vice chairman of the Maryland National Capital Park Planning Commission.

I've prepared a written statement which was submitted to your offices prior to this hearing. My statement outlines the State legislative enabling authority of the commission and the Prince George's County Planning Board; and the role the planning board plays with respect to the regulation of land planning and development in the county, especially with regard to the PortAmerica project.

While the planning board administers an extensive parks and recreation program within Prince George's County as well, our purpose here today is to testify with respect to our land use planning function.

With specific regard to the PortAmerica project, the planning board has held two separate hearings attended by over 70 witnesses, and anticipates conducting at least two more hearings before the project proceeds to construction. We have solicited comments on this project from over 23 county, State, and Federal agencies to aid us in our deliberations over this project.

All hearings held either before the planning board, the zoning hearing examiner, or the district council have been conducted pursuant to published public notice and posting of the property pursuant to the Administrative Procedures Act of the State of Maryland.

The Prince George's County zoning ordinance and subdivision regulations require review by the planning board at five different phases with respect to this property.

The concept of a waterfront center at Smoot Bay was initially approved by the planning board in 1981 with its adoption of the subregion 7 master plan. Rezoning applications for what was then called "Bay of the Americas" were submitted to the planning board for its review in 1982 and approved by the district council in 1983.

The planning board held hearings on a conceptual design plan for PortAmerica in May of this year, and the district council affirmed the planning board approval of the plan in July.

Before this project proceeds to final construction, the planning board must approve the subdivision plan and detailed site plan. Once these approvals are gained by the developer, he may apply for building permits to begin construction. However, all building permits are reviewed by the permit review division of our planning department to ascertain compliance with the detailed site plan and all conditions of the development of the site.

Let me hasten to add that the planning board takes its role very seriously in reviewing all development proposals within Prince George's County because of our sincere commitment to superior quality of development within our jurisdiction. We've been particularly sensitive to the impact of the PortAmerica project because of its key location as the gateway to the U.S. Capital and its environmental setting at a major tributary to the Chesapeake Bay. We have, therefore, sought to carry out the intent of the Maryland legislature enacted into law through the Chesapeake Bay Critical Areas Act by requiring the applicant of this project to mitigate all adverse impacts of this project on the water quality of the Potomac River and its environmental settings.

This project has been reviewed by every agency of the State of Maryland involved in the critical area review process. I've personally sat through hours of testimony and reviewed countless volumes of reports, along with other members of the planning board, all regarding the environmental impact and design of this project, to insure that PortAmerica will be the kind of project that exemplifies the state of the art by environmentally sensitive land development.

I trust that this committee will support us in this effort, recognizing the continued importance of local control over land use planning to insure orderly, efficient development of land while preserving our wealth of natural resources and promoting our national heritage.

Thank you, sir.

Senator MOYNIHAN. Thank you, Mr. Chairman.

Well, on that note, I think we can close our hearing. I really have to be in four other places. We're trying to end the Congress.

Let's see, is the Government still alive? I can never remember from day to day. We have another 4 days.

May I say to you, Mr. Rhoads, that it couldn't be more clear from the testimony we've all had that your planning commission has done a very capable job about siting and looking after the environmental impact specifically as is understood to be wetlands and water and land.

We're dealing here with a somewhat new question for us, which is to say the skyline. We have a very specific mandate that goes back almost a century to maintain the heights here in this capital, and they have reference to specific things—the Washington Monument, the Capitol dome in particular. We have seen our unwillingness to act with respect to the area across the river to the south, which has gradually brought about an intrusion which has been not welcome at all, although one big sonic might shatter all that glass.

We are going to have to think about this and we are going to have to think with some deliberate speed here, else the matter will be taken out of our hands.

I appreciate everyone's advice and counsel here. We appreciate any advice you might send us.

Mr. Peck, if your board meets, it would be very helpful to have a board position. We obviously are not going to be able to do anything in this Congress because we don't know enough. We haven't thought this through. It's something new to us. It's not quite our committee and it's not quite anybody's committee, but it's certainly Congress' concern. We'll find a way to address it, which is not to say what we will do, but I think it is required of us now to make a decision. We will involve ourselves in this matter or we will not to the extent of saying it is agreeable to us that this matter proceed as it is or we want it changed in such and such a way. But I just don't think it's enough for us to act as if it isn't happening. We have taken congressional notice of the matter. We had this hearing. A bill has been introduced and others will. We will try to have legislation in some direction by early January, and we will proceed from there.

No doubt we will be hearing from you.

We'd like to thank you all. We'd like to thank our audience. They've been very patient in a long and detailed and I think very useful hearing.

With that, we will conclude.

[Whereupon, at 12:40 p.m., the committee recessed, to reconvene at the call of the Chair.]

[Statements and other material submitted for the record follow:]

STATEMENT OF SENATOR ALAN CRANSTON
Environment and Public Works Committee
Wednesday, October 1, 1986

Mr. Chairman, thank you for this opportunity to focus on some critical federal environmental assessment procedures as they come into focus through the PortAmerica project in Prince Georges County, Maryland. This trade center proposal sets in motion several environmental processes, including:

---The National Environmental Policy Act (NEPA);

---the dredge and fill permit program under the Clean Water Act;

---the National Historic Preservation Act;

---and review by the Federal Aviation Administration.

To work, these processes need the coordinated efforts of local, state, and federal agencies including the National Capital Planning Commission, the National Park Service, the Federal Highway Administration, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the Environmental Protection Agency, the Advisory Commission on Historic Preservation, and the Federal Aviation Administration. In all, five local agencies, six state agencies, and nine federal agencies are required by law to review a project of this magnitude, with its critical placement on Potomac wetlands, its connections with federal highways, its impact on fish and wildlife, historic preservation issues, and air traffic implications.

The programs we review today have long been championed by this Committee. The proper administration of NEPA and other programs are your responsibility and they have been well tended. Members of the Committee have also shown a keen interest in the Stewardship of the Capitol's unique historic resources---through work on the Cooperative Use Act, Union Station's renovation, and the Pennsylvania Avenue Corporation.

I believe the PortAmerica project encompasses two ranges of federal environmental interest.

One is the specific federal environmental laws that are called into play, and we must ask:

---Are these processes adequate to do the job Congress intended them to do? and

---Are they suitably carried out by the responsible agencies so that Congressionally-mandated environmental protection is achieved?

The second range of federal interest is the protection of the historic and aesthetic environment of the national capital area.

For nearly two centuries, generations of citizens and their governments---local as well as federal---have fought to maintain a national center that is both political and symbolic. As a result, Washington's low skyline is one of the treasures of the world. Washington is more than just a city. It is a contiguous landscape in which sky and land and light and air are treated as partners in the full creation we call our nation's capital. Historically, there is little that is done in any part of the landscape that does not reflect upon the whole.

A federal interest is clear. In fact, federal planning more than anything else has shaped the total area into what it is today. L'Enfant's original design for the federal city reflected George Washington's interest in the countryside at large, and his vision for the nation's capital did not end at the foot of the mall. The Congress expressed its interest in the capital skyline when it enacted building height limitations within the District in 1910. In 1926, the federal government created the National Capital Park Commission to develop the "park, parkway, and playground system of the National Capital and its environs." In 1952, the Congress enacted the National Capital Planning Act and charged a new National Capital Planning Commission with the responsibility "to plan the appropriate and orderly development of the National Capital and the conservation of the important natural and historical features thereof."

Mr. Chairman, the 42-story glass tower that is the PortAmerica centerpiece has generated much concern. For it is a fact of life that tall buildings beget tall buildings. In the arithmetic of urban skyscrapers, One becomes Two becomes Four becomes Six, and so on, until this enchanting federal city---the Lincoln and Jefferson Memorials, the Washington Monument, the Capitol, the White House---is encircled and dwarfed by giants of glass and steel. If that is allowed to happen, generations of Americans to come will visit Washington and see new monuments---monuments to our folly.

Paul Goldberger, architecture critic for the New York Times, put it simply: ". . . the action of putting a 700-foot tall glass tower a short distance outside of the District of Columbia would be a planning and urban design disaster. . . and if the tower is built, it may be less a victory for the idea of local autonomy as for the ability of a local government in effect to hold a central city hostage. For although Prince Georges County does have the right to its own urban planning, it is hard to believe that this right extends to a license to upset the balance of urban design in this entire region."

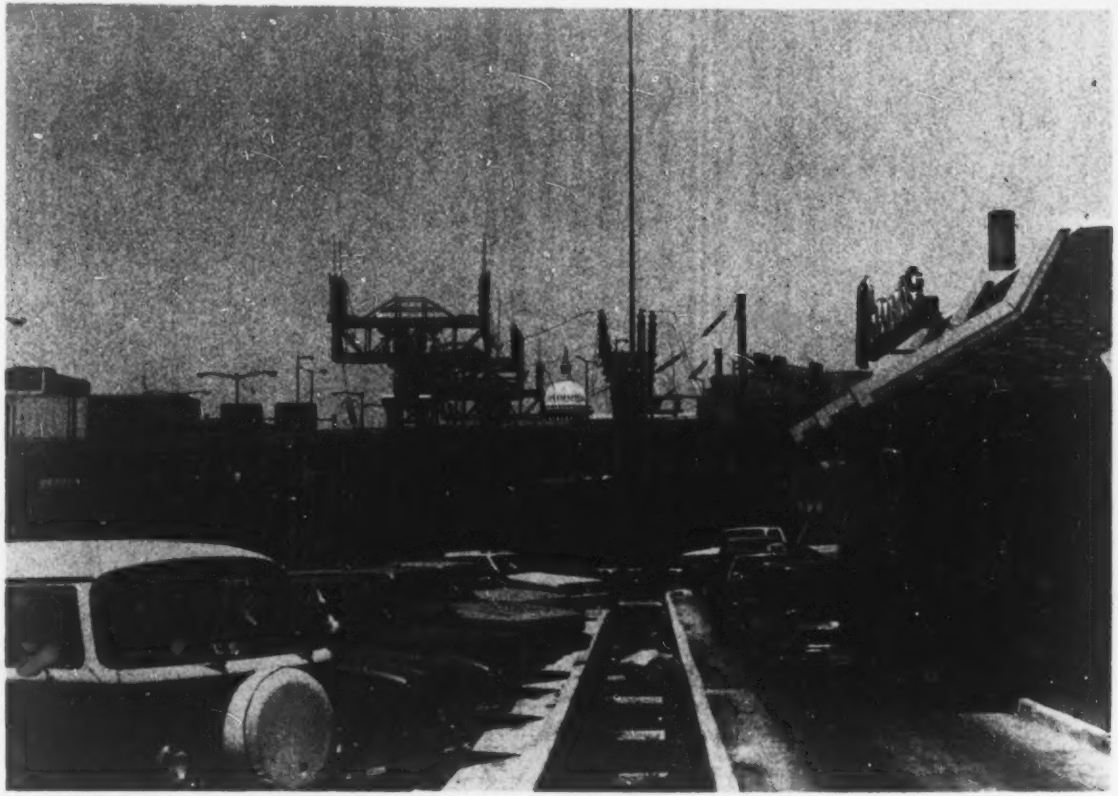
Mr. Chairman, I look forward to the expert testimony the Committee will hear today. But it is not simply the letter of our environmental laws to which we must look, but to the spirit. The binding concepts of all these statutes are reverence for order and for space, a passionate regard for our resources, and a keen sense of the eternal equation between preservation and creation.

We have a responsibility to protect the vistas and skyline of our nation's capital. They belong not simply to those of us who work and live in this great city, but to millions of Americans for whom they are a hard-won symbol of our precious heritage.

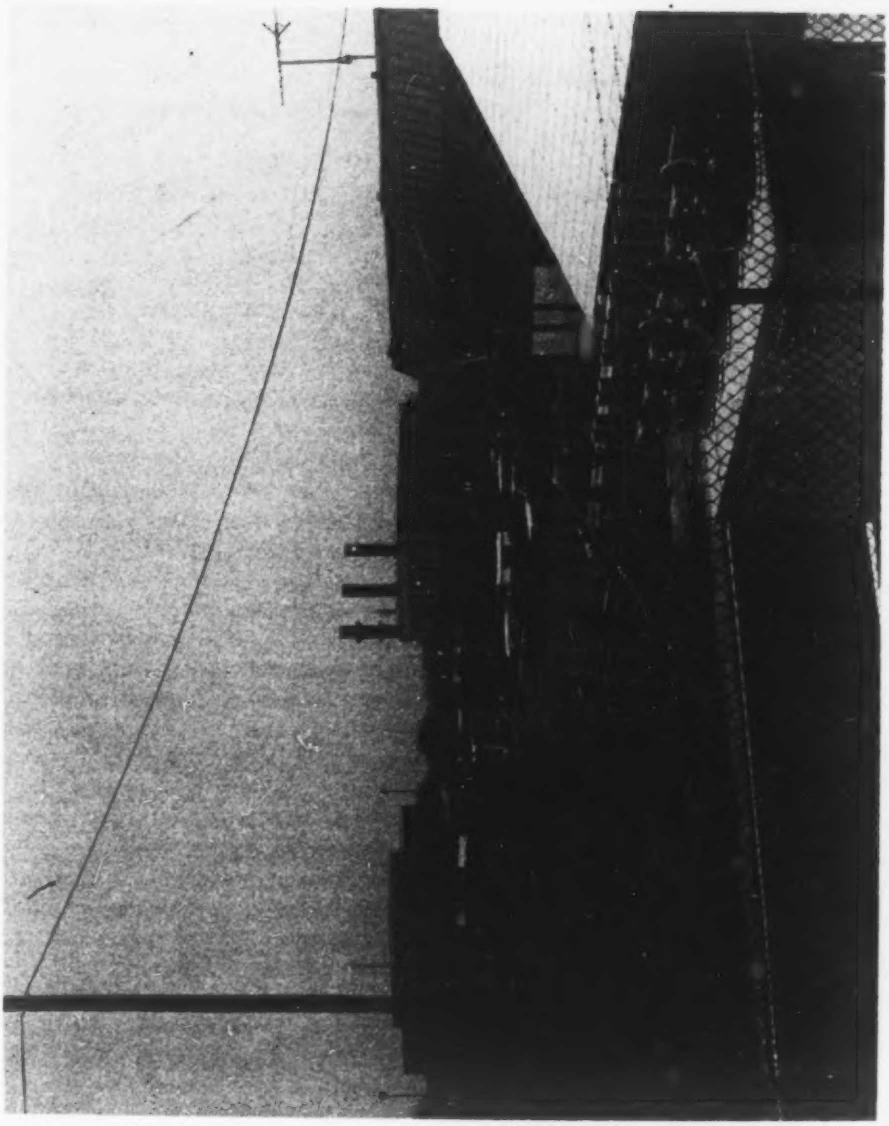
Let us see how well we are doing in meeting this responsibility.

Thank you, Mr. Chairman.

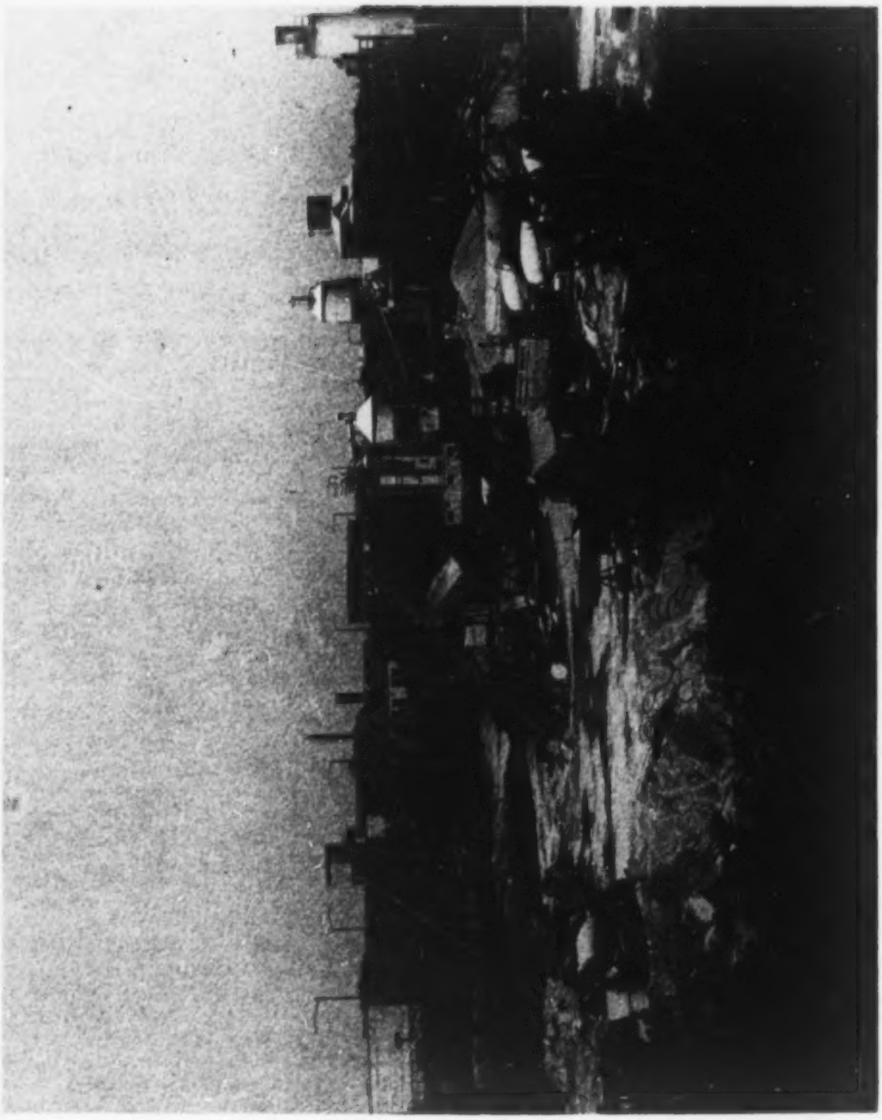
PHOTOS SUBMITTED BY CONGRESSMAN HOYER



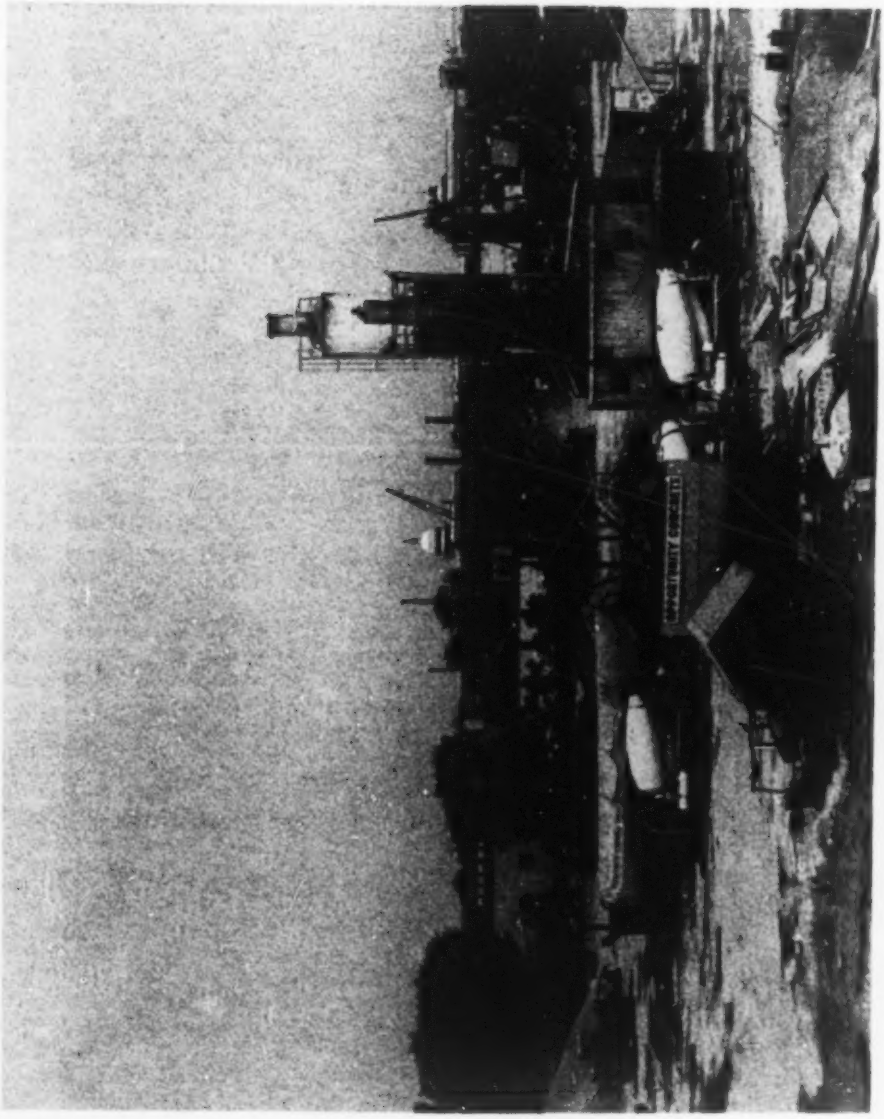
View from McDonalds on South Capitol Street, near the Capitol.



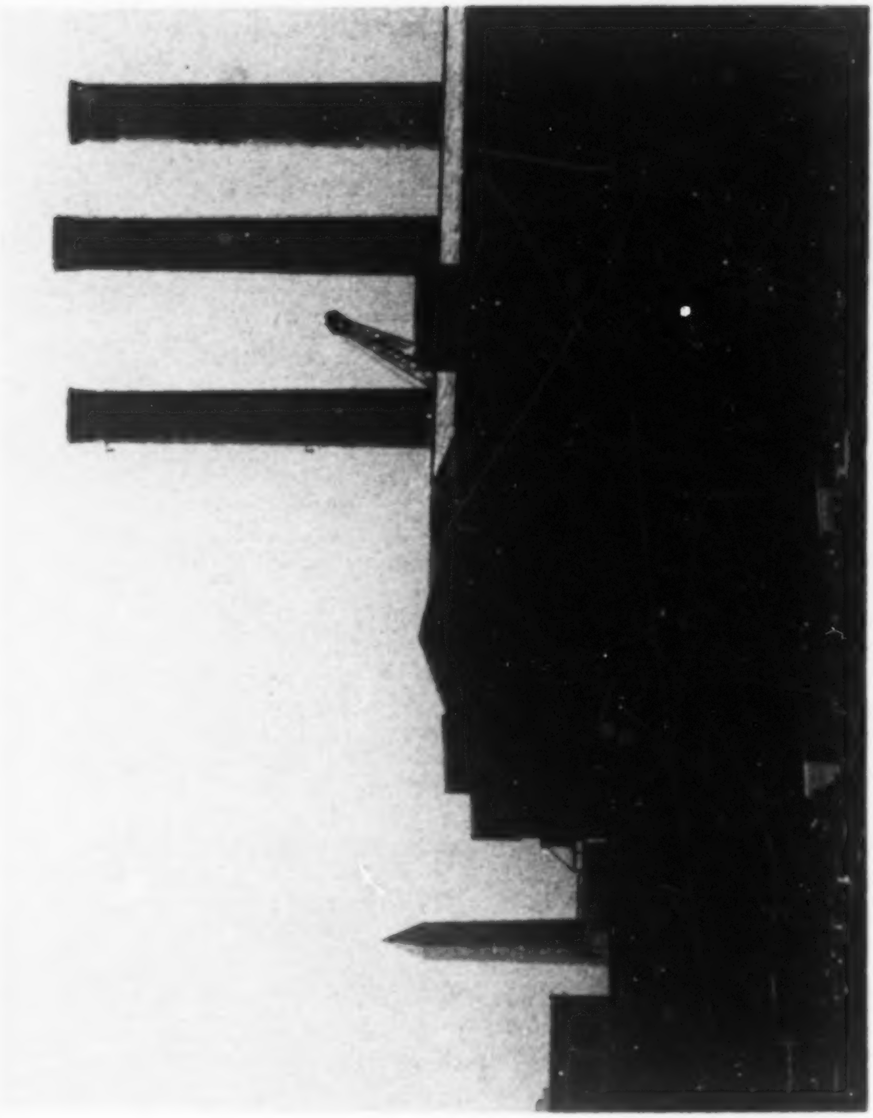
I-295 south of Bolling AFB.



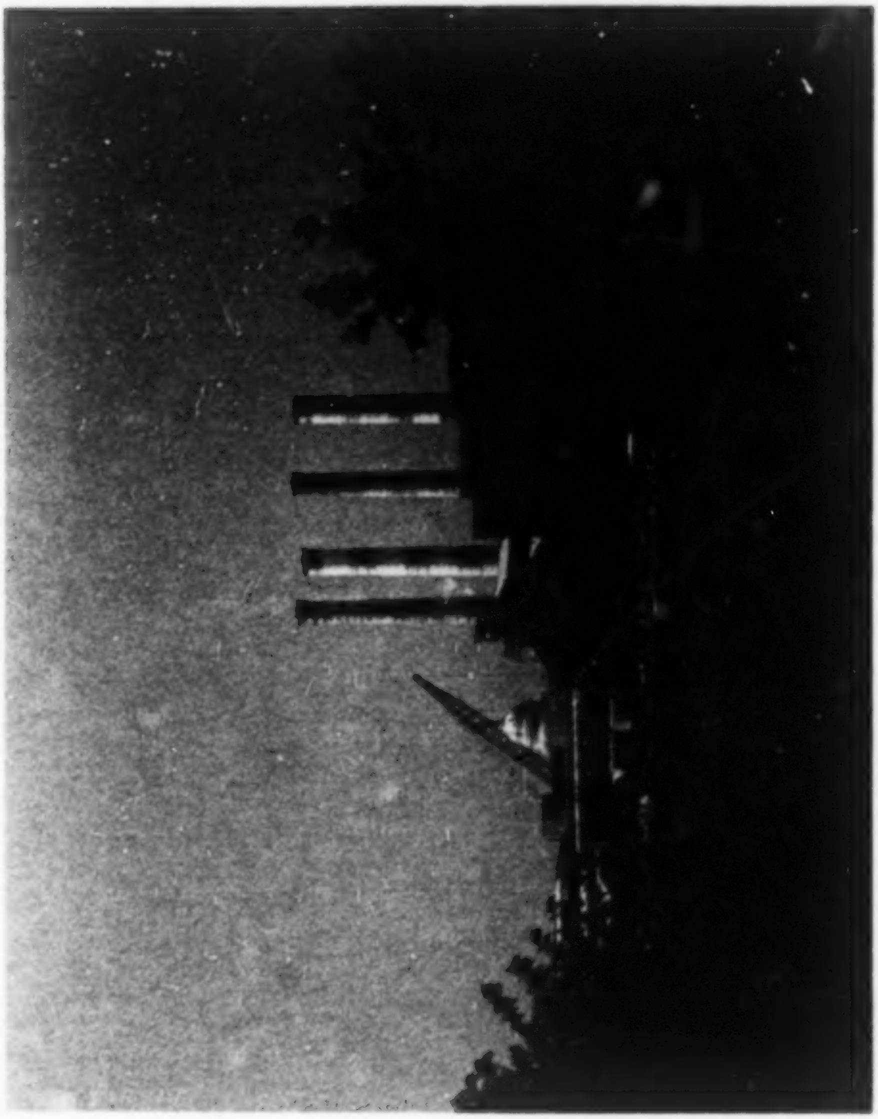
South Capitol Street Bridge.



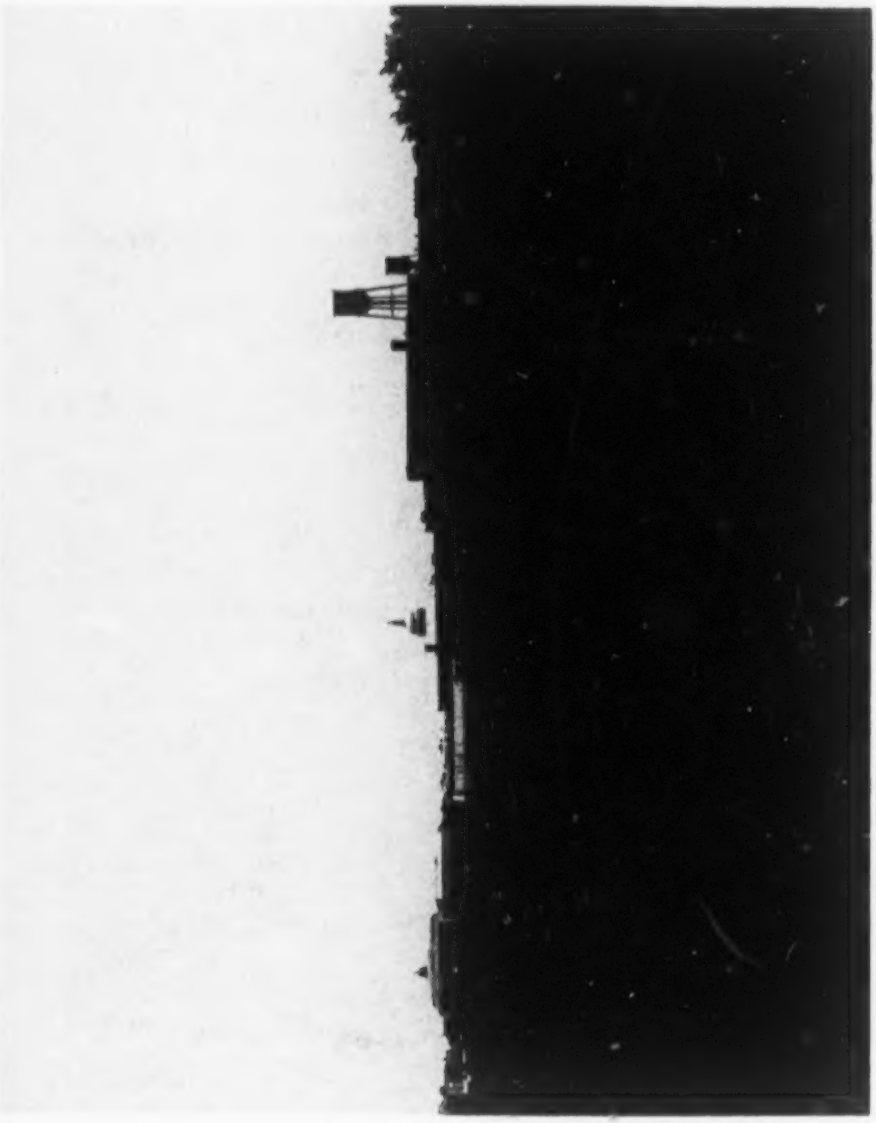
View from South Capitol Street Bridge.



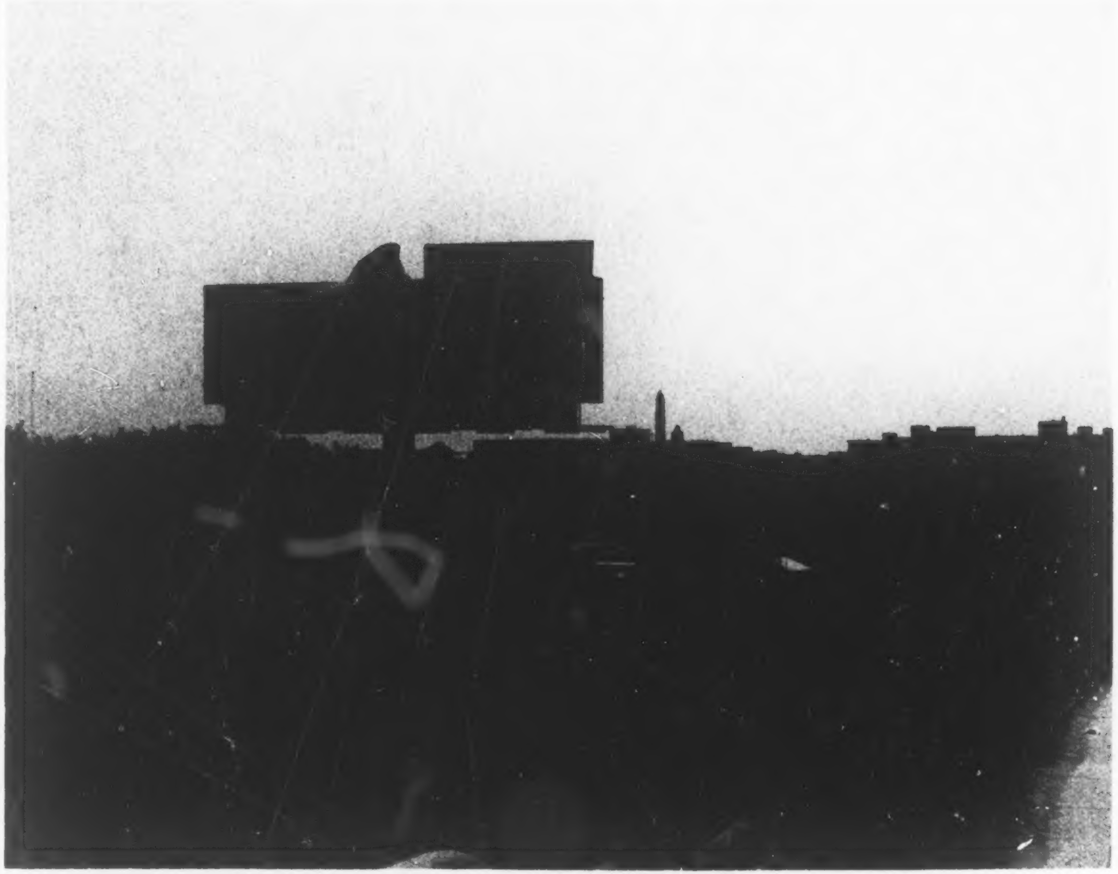
View from Anacostia Park (using a 300mm telephoto lens).



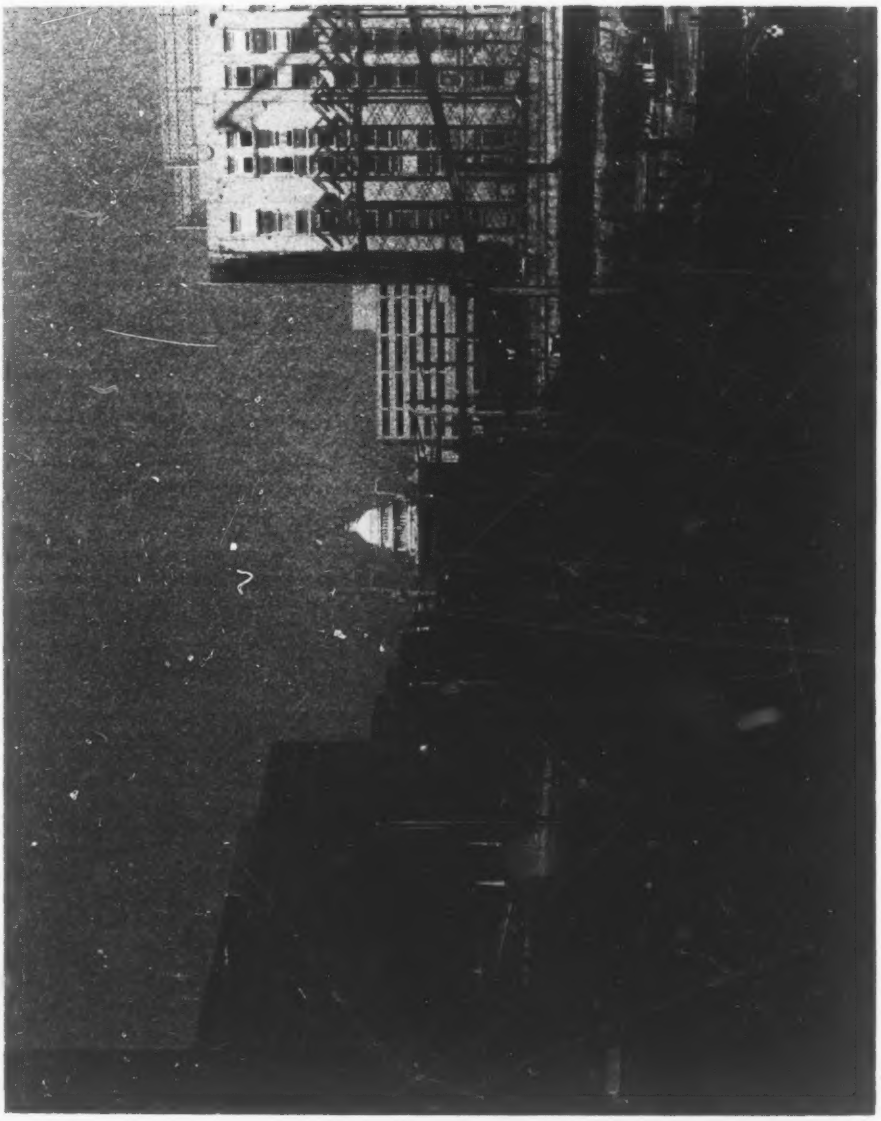
View from Anacostia Park (I-295).



View from New York Avenue (Amtrak overpass).



New York Avenue near Florida Avenue.



View from L'Enfant Plaza looking east toward the Capitol.

STATEMENT OF JAMES T. LEWIS BEFORE THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

October 1, 1986

My name is Jim Lewis. I am the developer of the PortAmerica project. The opportunity to explain this project is always welcomed as there has been so much misunderstanding and misinformation about it.

My predominate interest in this project is to achieve the utmost architectural excellence for this most important and beautiful site. Accordingly, upon obtaining control, my first effort was to retain the services of Philip Johnson and John Burgee whom I consider to be this country's greatest architects. It was the good fortune of the entire metropolitan community, particularly Prince George's County, that they agreed. Their work on the project has been intense and the result of their efforts, and the tall building in particular, has been considered by many as their masterpiece.

Each element of this project must be understood in its overall context. This is a huge project which includes almost a mile and a half of riverfront and an additional similar distance along an interstate highway.

One major point: Everybody of whom I am aware, enthusiastically approves the development of the riverfront parcel, including the NCPC and the National Park Service. It is only the height of the one building on the upper parcel that has caused controversy.

Because of limited time I would like to review the overall project by a series of slides. We have also prepared booklets that contain prints of these slides for your future reference. (This statement continues according to the written description in the booklet pertaining to each slide.)

To answer specifically your questions posed at page 2 in your September 19, 1986 letter to me:

I. Architectural and Aesthetic Objectives of PortAmerica

The architectural and aesthetic objectives predominate my actions regarding this project as reflected in my discussion regarding the slides. It would be a loss to us all to compromise this great architecture with no equally redeeming purpose.

The PortAmerica project, the largest water project of its kind in the region, is designed to mold and shape the shoreline of the Smoot Bay area of the Potomac River for water-based recreational, residential and commercial development. The waterfront part of an esplanade is a broad 12-foot wide walkway connecting the entire length of the shoreline with the National Park Service land to the north.

The residential area, entitled Oxford Landing, will house 2,000 people in exclusive condominiums and townhouses. The layout of the residential area allows full views of the water from all areas of the project.

The commercial area will consist of: a 350-room world-class hotel with access to Oxford Landing and the World Trade Center complex to the south; a 75-suite luxury country inn for vacations, corporate retreats and accommodations for guests of Oxford Landing residents; a shopping arcade with the world's finest international shops and gourmet restaurants; a yacht club with a large swimming pool, tennis courts and a club house; a marina with 250 slips for residents and boaters generally; and a large multi-purpose community center for the public and visitors to attend concerts, meetings and other community activities.

Architects Philip Johnson and John Burgee are world-renowned in their profession with such structures to their credit as New York's AT&T headquarters building, Houston's Pennzoil Place and Republic Bank Center, PPG Place in Pittsburgh and other hotels, museums, theatres and educational facilities around the world. Philip Johnson is known as the person who introduced modern architecture to America as director of the Department of Architecture at the New York Museum of Modern Art in the 1930's. John Burgee, a prominent designer from Chicago, has been in partnership with Johnson for 20 years. Together they have won virturally every award known to architecture.

Johnson observed that every "architect's dream is to build a town. We build big buildings but rarely get to do the surrounding environment. We have never done, and no one has ever done, a town of this kind before." In designing this unique shoreline setting, the architects drew upon the Georgian style of 18th Century England: The Great Crescent of Bath, Regents Park in London, and the Adelaide in Brighton. Although Georgian in architecture, the setting has a flavor of the Mediterranean, mindful of Nice, Cannes or St. Tropez.

The community of PortAmerica occupies two parcels of land connected by a Grand Boulevard. The boulevard and highway system within the complex will connect with the state and interstate highway systems. The new town has been carefully designed to be enjoyed in every season. Its spring-fed bay is protected from prevailing winds or ice by the trans-land created for the Woodrow Wilson Bridge. Much of the surrounding land is park land with stands of trees, trails and picnic areas. A wide esplanade enhances the view of the river and the Virginia shore.

Mr. Johnson is no stranger to the Washington, D. C. area. He lived in Georgetown after World War II. Among his contributions here are the Dunbarton Oaks Museum for Pre-Columbian Art, the Kennedy Center's Terrace Theater and a 3-building complex at Tysons Corner for James T. Lewis, the developer of this project. When initially studying the setting for PortAmerica, Johnson was reminded of the Bay of Bombay and the Bay of Naples. The cove in Bombay is decorated at night with a ring of lights known as "The Queen's Necklace." A similar string of lights will illuminate PortAmerica's waterfront promenade.

II. The Significance of the Tower to the Project as a Whole

The 42-story tower will become the World Trade Center building of Washington. The World Trade Center Washington, D. C. (WTCW) is a member of the World Trade Center Association's international network of 100 trade center organizations in 50 countries throughout the world. There are more than 65,000 people who are members of the world trade center network and who take advantage of its services such as information on trade opportunities, seminars and training covering a wide range of international business concerns, clubs and dining facilities, exhibit facilities worldwide, and trade missions organized in cooperation with world trade centers in the United States and abroad.

WTCW offers its members accessibility to decision and policymakers in Washington as well as to a wealth of information on the global market places found only in Washington, D. C. The WTCW is a non-governmental, nonprofit organization. Its primary purpose is to provide an environment in which nations can benefit from greater communication and increased resource exchange.

More than 130,000 automobiles will pass PortAmerica entering and exiting Maryland everyday and appreciate the architecture of the project. People will come from all over the world to conduct business here. Composed of more than 1.5 million square feet of office space, the WTCW complex will enjoy the most luxurious facilities and specialized business services. This project will be a boon to Prince George's County and the entire metropolitan area generally by creating 10,000 new jobs, $2.5 million annually in local taxes, and be a model town to live and work in as well as one to enjoy and appreciate from afar.

The tower serves as the focal point for the project as a spire, figuratively speaking. The concept of one tall building amidst much shorter ones avoids the appearance of a concrete canyon, such as Rosslyn or Crystal City. Environmentally, the height results in a lesser footprint and, together with enclosed parking, provides for a much greater area of green space. Note the various sketches (Exhibits D & L). Architecturally, its design serves as a counterpoint to the Georgian architecture elsewhere in the project; if it were the same type of architecture there could be a certain monotony that might distract from its aesthetic value. Philip Johnson, of course, will testify much more elaboratively and authoratively than I could.

III. Alternative Designs and Sites

As to possible alternatives, a most important consideration is that Prince George's County has approved the present plan unanimously following extensive hearings and analyses. Any substantive change would have to be re-submitted through the County democratic processes and it is not likely the County would be sympathetic to a major change dictated by those who, at least in Prince George's view, have sought to usurp that County's jurisdiction.

There are two likely alternative designs that may be addressed to compare with the present design:

A. The initial Bay of Americas design, which included buildings at a height of 230' built on piles over the river with a great deal of vehicular traffic and parking along the riverfront to designated commercial areas;

B. A design which would leave the allocation of commercial buildings to the upper parcel and develop it as a typical suburban office development; i.e., a series of office buildings 12-18 stories (which conforms to the NCPC point of view) without structured parking. Thus, the length of the upper parcel would be asphalted with cars parking on it and a series of rectangular buildings. This plan would assure the developer greater profitability with much less risk than the current plan and would conform to all the bureaucratic pursuasions. But, this would be a shameful compromise of a great architectural plan and building.

Philip Johnson will elaborate on the alternatives that he would consider and why he believes the present plan is the best.

The site for the tower was chosen after extensive studies by the architects of flight patterns and FAA regulations. It was determined that the present location was the best suited for the tower.

IV. PortAmerica's Visual and Environmental Impact on The Capital Area

The location of the proposed World Trade Center building is approximately seven miles from Washington's monumental core. Because its location is to the south of the monumental area, rather than to the east or west along the vistas, PortAmerica will not be seen by visitors walking up the Capitol steps, walking up and down the Mall or visiting the Jefferson Memorial, Lincoln Memorial, or The White House. Even from the base of the Washington Monument, the PortAmerica project would not be visible.

Each of the tall buildings in the Rosslyn area have greater impact on the view from the top of the monumental area than would the PortAmerica building. (See Exhibit R). This is in addition to the more important impact that the Rosslyn buildings have as a background when the Washington Monument is viewed from the Capitol building.

Of course, there are common vantage points where both the monuments and the PortAmerica tower can be seen but this same point can be made about many structures in the metropolitan area. From the Wilson Bridge, for instance, the monument area can be seen with the PortAmerica tower but so can the Blue Plains Sewage Treatment Plant, Bolling Air Force Base and many other undesireable structures. The World Trade Center building itself is a beautiful work of architecture so that even where it can be seen it will enhance and not distract from other buildings, including the monuments.

V. Steps Taken to Ensure Compliance with the NEPA, "404" and the "106" Historic Review Process

A. NEPA - Development planning for the PortAmerica project has made environmental considerations an integral part of planning and design of this new town. The environmental programs being developed for this project are being designed to achieve the protective goals of Maryland's Chesapeake Bay Critical Area Law; that is to:

1. Minimize adverse impacts on water quality that result from pollutant discharge or run-off;
2. Conserve fish, wildlife and plant habitat; and
3. Establish a land use which accommodates growth, yet also recognizes that even if pollution is controlled, adverse impacts can occur.

The environmental programs also address the criteria of Title 14, Subtitle 15, Chesapeake Bay Critical Area Commission Criteria for intensely developed acres (COMAR 14.15.02.03) including: storm-water management; public access to the shoreline; the enhancement of biological resources including urban forestry, landscaping, gardens, and wetland and aquatic habitat restoration; and the establishment of a program for the enhancement of forest and developed woodland and the minimization of forests and woodland destruction.

In addition, several aspects of the project respond to other provisions of the Critical Areas regulations. The marina will be developed and dredging will be conducted so as to meet the criteria for Water Dependent Facilities. Shoreline stabilization will be carried out in compliance with the policies established for Shore Erosion Protection Works.

A vital phase of the PortAmerica project is to mold and shape the shoreline of the upper tidal region of the Potomac River, also known as Smoot Bay (an inoperative sand and gravel mining pit), for the purpose of water-based recreational, residential and commercial development. The placing of fill material in the Bay will provide elevation, reclamation and stability to the land.

The project proposes extensive environmental measures including innovative features of mitigation and enhancement. In summation, some of the more important measures are as follows:

1. Water quality, both of run-off, and in Smoot Bay and the Potomac River, will be better after development than it would have been without PortAmerica;

2. More acres of protected woodlands in the critical area will exist (and in more important locations) after PortAmerica's development than exist today;

3. Higher quality communities with more diverse species of submerged aquatic vegetation will be created and protected as a result of the PortAmerica project;

4. The quality of fish habitat will be enhanced by the PortAmerica development through the creation of "permanent" nursery areas, hiding areas, spawning areas, and stabilized S.A.V. beds;

5. Nearly a mile of severely eroding shoreline will be stabilized by creation of the PortAmerica bulkhead; and

6. The PortAmerica project will fund a significant research project which will be of substantial benefit to the Chesapeake Bay effort.

For more additional information, please reference "PortAmerica Concept Plan Part III: Comprehensive Environmental Design Plan as submitted into the administrative records at the Concept Plan Hearing for PortAmerica before the Prince George's County Planning Board of the Maryland National Capital Park and Planning Commission.

In order to perform the landfill required for the PortAmerica project, permission must be obtained from the United States Corps of Engineers, pursuant to the Clean Water Act, 33U.S.C.1344, Section 404 and the Rivers and Harbors Appropriations Act of 1899, 33 U.S.C., Section 10.

B. "404" - In preparing its application for submittal to the Corps of Engineers, PortAmerica is working with its own staff, its legal advisors and environmental consultants to ensure compliance with S 404 requirements including: that any damaging effects caused by the dredge and fill activities be minimized and mitigated; that the proposed project be water-dependent; that the project be within the public interest; and that no practicable alternatives to the use of Smoot Bay exist. We anticipate that our application will be submitted to the Corps of Engineers prior to the end of the current calendar year.

Our staff, engineers and environmental consultants have gone to the very roots of the Clean Water Act and the National Environmental Policy Act to design a comprehensive program of environmental conservation, using a holistic approach that will give us cleaner water and create a higher quality environment with a better habitat for all of the important species in the PortAmerica site.

C. "106" - The National Historic Preservation Act, "NHPA", (16 U.S.C. Section 470-470w.6) was enacted in 1966 to establish a nationwide preservation policy. The statute establishes the Advisory Council on Historic Preservation as an independent federal agency. The Council is responsible for implementation of Section 106 of NHPA which requires federal agencies to do the following prior to approval of the expenditure of any federal funds or the issuance of any federal license:

1. take into account the effect of the agencies' undertakings on historic properties;

2. afford the Council a reasonable opportunity to comment on the agencies' undertakings.

In the case of the PortAmerica development, I presently know of no federal undertaking that might have any effect on historic properties. Section 106 applies only to federal agencies and not to state or local governments or to private individuals. A part of the PortAmerica development is the subject of archeological interest to the Prince George's County Planning Board of the Maryland National Capital Park and Planning Commission. This part of the development is the Addison Plantation site which is located within the north or "Beltway Parcel" of the PortAmerica development. To the best of my knowledge, no federal agencies are presently involved in any planning, funding, assisting or approving of any federal or non-federal project on the Addison Plantation site.

On May 9, 1986, the Prince George's County Planning Board of the Maryland National Capital Park and Planning Commission approved the Conceptual Site Plans for PortAmerica with several conditions; the important one for this discussion is:

> "The applicant will conduct an archeological investigation in the area identified as the site of the Addison Plantation, prior to any grading permits or detailed site plan approval applying to this area. This investigation will be undertaken in consultation with the Maryland Historical Trust. All significant components of the Addison Plantation will be identified and investigated and a mitigation plan will be developed," page 5, #2.

Following a solicitation for proposals, James T. Lewis Enterprises, Ltd. awarded a contract to John Milner Associates, Inc. of Weschester, Pennsylvania to conduct the required archeological investigation. The purpose of the investigation, which is currently in progress, is to locate and identify cultural resources located in the Addison Plantation site in order that a responsible mitigation plan can be developed and executed prior to construction.

The investigation will culminate in the completion of a final report detailing the study results and presenting recommendations for mitigation of cultural resources. The report will be sent to: 1) the consulting archeologist for James T. Lewis Enterprises, Ltd.; 2) the State Administrator of Archeology at the Maryland Historical Trust; and 3) the State Archeologist at the Division of Archeology, Maryland Geological Survey. These reports will be reviewed by these individuals to insure that the work was sufficient to:

1. fulfill the goals of the investigation;

2. assure compliance with the concerns of the Maryland National Capital Park and Planning Commission; and

3. develop a scope of work outlining what level of additional archeological recovery methods will be necessary for phase II of archeological work in the project area.

Following completion of the field work we are considering the donation of all recovered artifacts to the museum which is being planned by the Crescent Cities Jaycees Foundation at their Oxon Hill Manor property.

Although Section 106 of NHPA is not applicable to the PortAmerica development, a plan to avoid or mitigate any adverse effects of construction on the Addison Plantation site has been agreed to by James T. Lewis Enterprises, Ltd. and the Maryland National Capital Parks and Planning Commission in consultation with the Maryland Historical Trust.

VI. Other Aspects

There are other points to make regarding this project:

A. We have endeavored to be wholly responsible and cooperative with all appropriate federal, state and local agencies and will continue to do so. We have entered into a Memorandum of Understanding (Exhibit T) with the NCPC and, even though the upper parcel was expressly excluded from that MOU and the NCPC acknowledges it has no jurisdiction, we have met twice with the full Commission and at other times with the staff as a matter of courtesy to discuss the tall building. We have made our own application to the FAA to assure that the building is not a hazard and have worked cooperatively with the airline pilots to the point where we are in substantial agreement as to the safety and convenience factors (see Exhibit V). We have met with the Corps of Engineers to explain our project. We are now undergoing an intensive archeological study of the site. We have been working with the state and federal highway departments regarding the ground transportation system. Most importantly, we worked extensively and thoroughly with the Prince George's County officials in the democratic process of submitting and receiving approval of our development plan, including the tower.

Regretfully, these courtesies have not been reciprocated and responsibilities have not been observed by some within the NCPC and the National Park Service.

B. The building height has been lowered substantially to an elevation of 730' above mean sea level. This should accommodate the airline pilots' concerns and FAA interests. At the same time, the building form and the development plan is maintained which is critically important since this is what the authorities in Prince George's County have approved unanimously.

C. The tower will not cause a proliferation of either high rise buildings, at least not in Prince George's County. See the statement filed with the NCPC by Mr. Parris Glendening, Prince George's County Executive, contained in this booklet as Exhibit U.

D. An agreement has been executed which provides a goal of 15% minority participation in the project. This is the first such agreement entered into with the State of Maryland on a private project by a private developer. A broad spectrum of minority interest are represented on the Board including Blacks, Hispanics, Asian Americans and Women.

TESTIMONY OF PHILIP JOHNSON BEFORE THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

October 1, 1986

Mr. Chairman and Members of the Committee:

My name is Philip Johnson, and I am with the architectural firm of John Burgee Architects with Philip Johnson. The idea behind the design development of PortAmerica is the creation of a new kind of suburban town: an intimate grouping of residences and apartments and four centers of activity. They are: 1) The Shopping Wharf & Hotel, 2) The Community Center & Residential Shops, 3) The Inn & Restaurant on the water's edge, 4) 3/4 of a mile from the river is a 4th center, an office group around a symbolic tower.

The waterfront dominates all layouts. Avenues follow the curving waterfront. The streets are radial, perpendicular to the water.

As befits a town with an urban "grain," the houses are joined on what the English call "terraces" roughly based on the urban street pattern of early America waterfront cities such as Savannah, Charleston and Nantucket.

These "terraces" are grouped around "Squares," "Piazzas," "Places" similar to Paris, London, Boston and Philadelphia.

The architectural exteriors of the residences and the ancillary buildings derive from historical precedent of what might be termed Regency of 18th century England and later Neo-Classical exemplars.

The key to the architecture, however, is the treatment of the waterfront itself. The important aims of the NCPC are important to us; walkways and bicycle ways; depth of green trees; an active marina. We lack the beaches of the Mediterranean, but the curve is that of the bay of Bombay and the bay of Rio de Janiero.

All is low-rise. Only the tiny steeple of the community house and the dome of the hotel rise as markers above the uniform low roof-line. This roof-line is lower than the guidelines of the NCPC.

The approach to the town is a tree-lined boulevard that passes through untouched woodland and slopes directly to the water at the node of the shopping center and hotel.

At the apex of the boulevard stands the World Trade Center Tower that geographically marks PortAmerica. This tower is a species of steeple, serving not only the waterfront town but the County of Prince George's and the State of Maryland. It stands at the entry to the State from the south. The exterior design of the tower is styleless - just as many New England steeples rise as styleless pyramids and cones above the trees of a small town.

The tower, standing alone, is the symbol of the area.

An alternative to building the tower, which the developer could have chosen, (incidentally, costing him less) was to build an agglomeration of mid-rise office buildings similar to the grouping in Rosslyn which so dominates the Potomac littoral of Washington today.

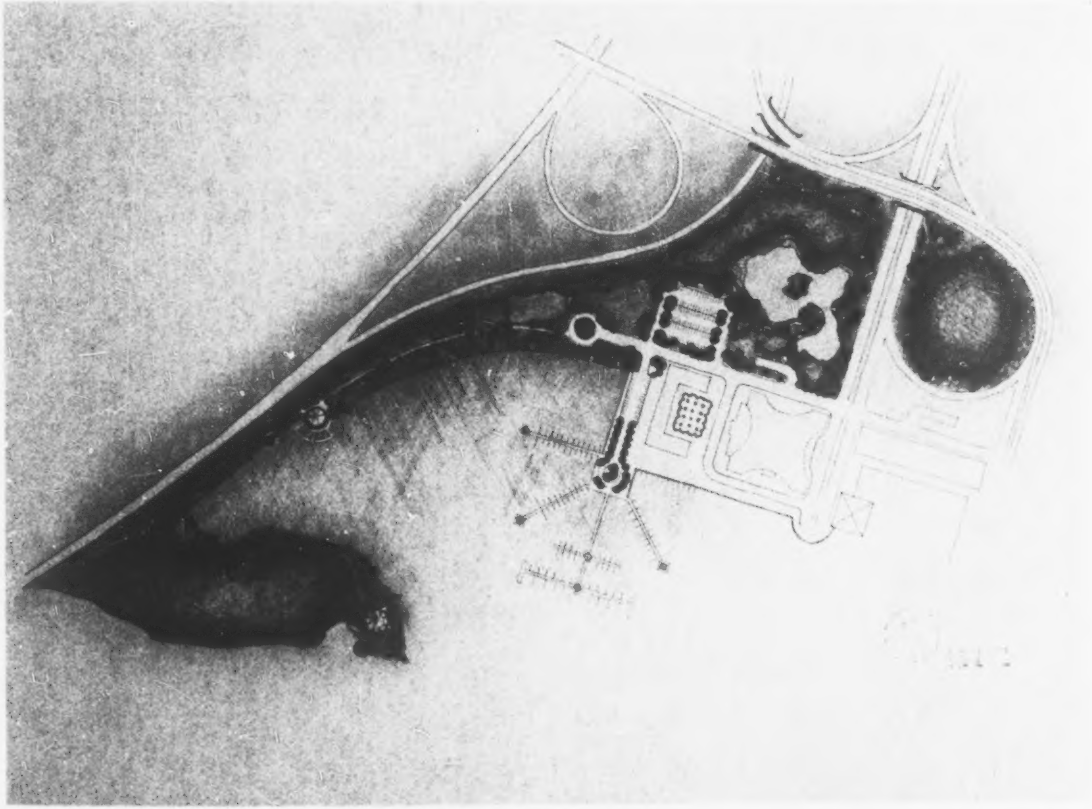
The architects feel that such a group would neither make a marker for the state and county, not make a fitting "steeple" for the waterfront town. It would destroy, nor "decorate," the waterfront area. Similarly, a dense massing of skyscrapers would be even worse. We propose a single steeple - standing alone.

The effect of our World Trade Center on the views from the city I leave to my partner John Burgee to discuss.

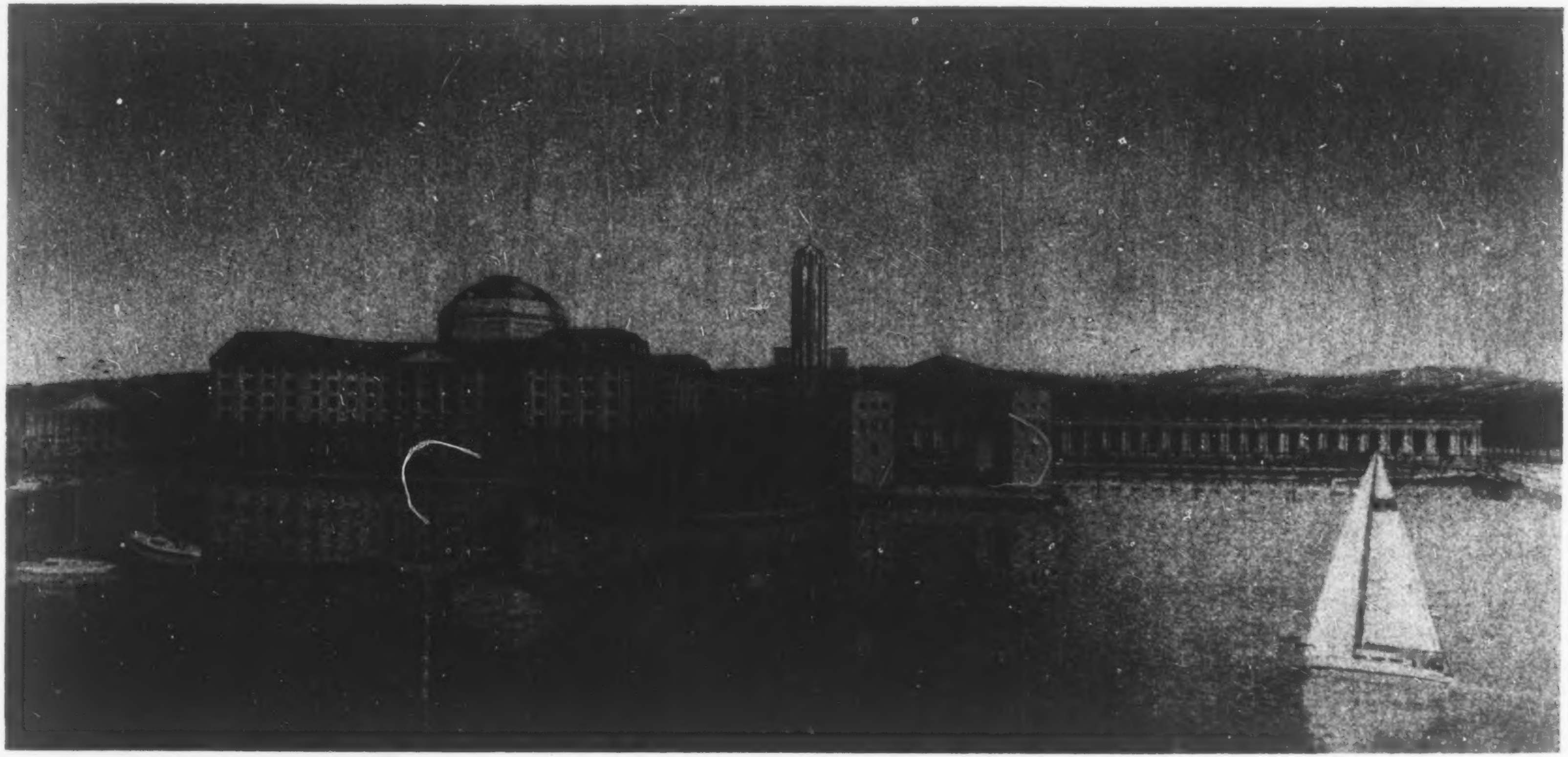
Personally, of course, I am a card-carrying preservationist; I marched with placards some thirty years ago in a small band of some ten citizens of New York City to protest the imminent destruction of our great Pennsylvania Station, a civic monument of classic design by MoKim, Meade & White and would certainly march again to save our great national monuments. I respect greatly the height restriction laws of the District of Columbia.

I sincerely believe our steeple in Prince George's County will constitute no insult to the city or to the principles of the city planning of the District.

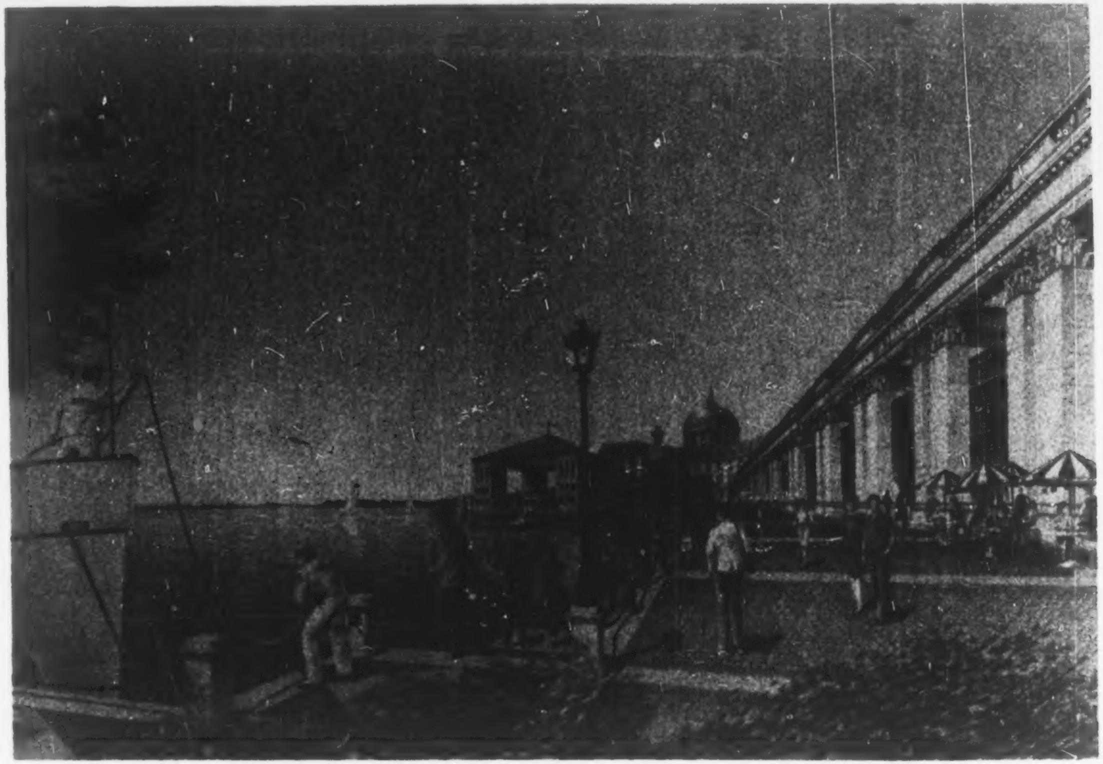
Thank you.



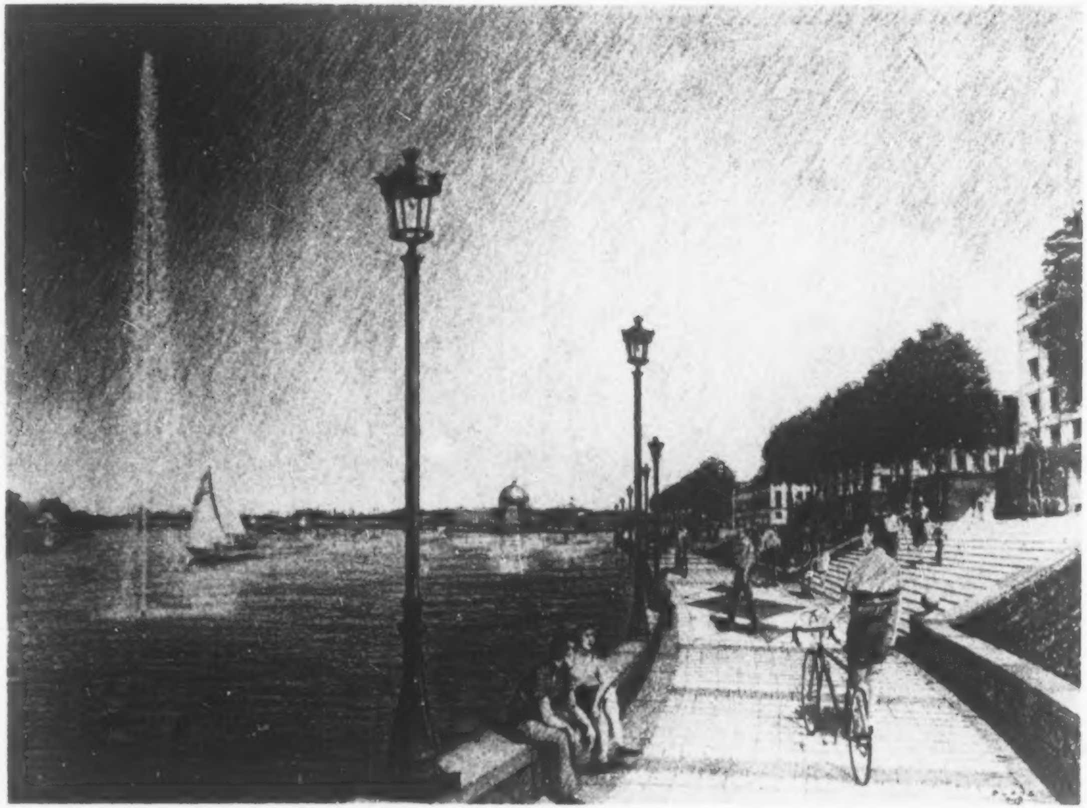
Much of the surrounding land in PortAmerica is parkland, with stands of trees, trails and picnic areas. There will be a major park along the river conveniently available to the public with trails, gazebos at strategic vantage points and water-related activities.



A world-class, 350-room, 5-story hotel at the northern end of the crescent will overlook the marina and ferry terminal. Shopping is right next door in a two-story retail shopping area reflecting the classic Georgian architecture of the riverfront development.

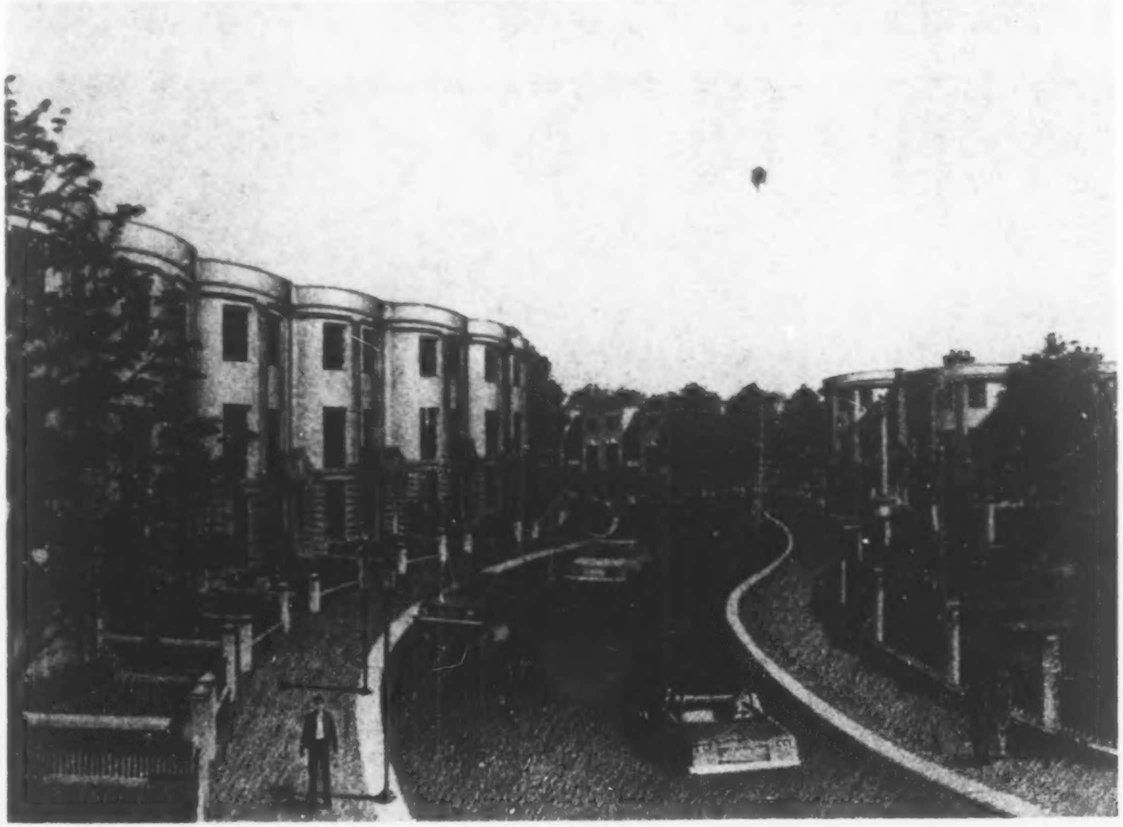


The world's finest shops and gourmet restaurants will be located in three 2-story pavilions on the waterfront adjacent to the hotel and the ferry terminal. Note the large plaza in front of the shopping area to enhance the public's enjoyment of the waterfront.

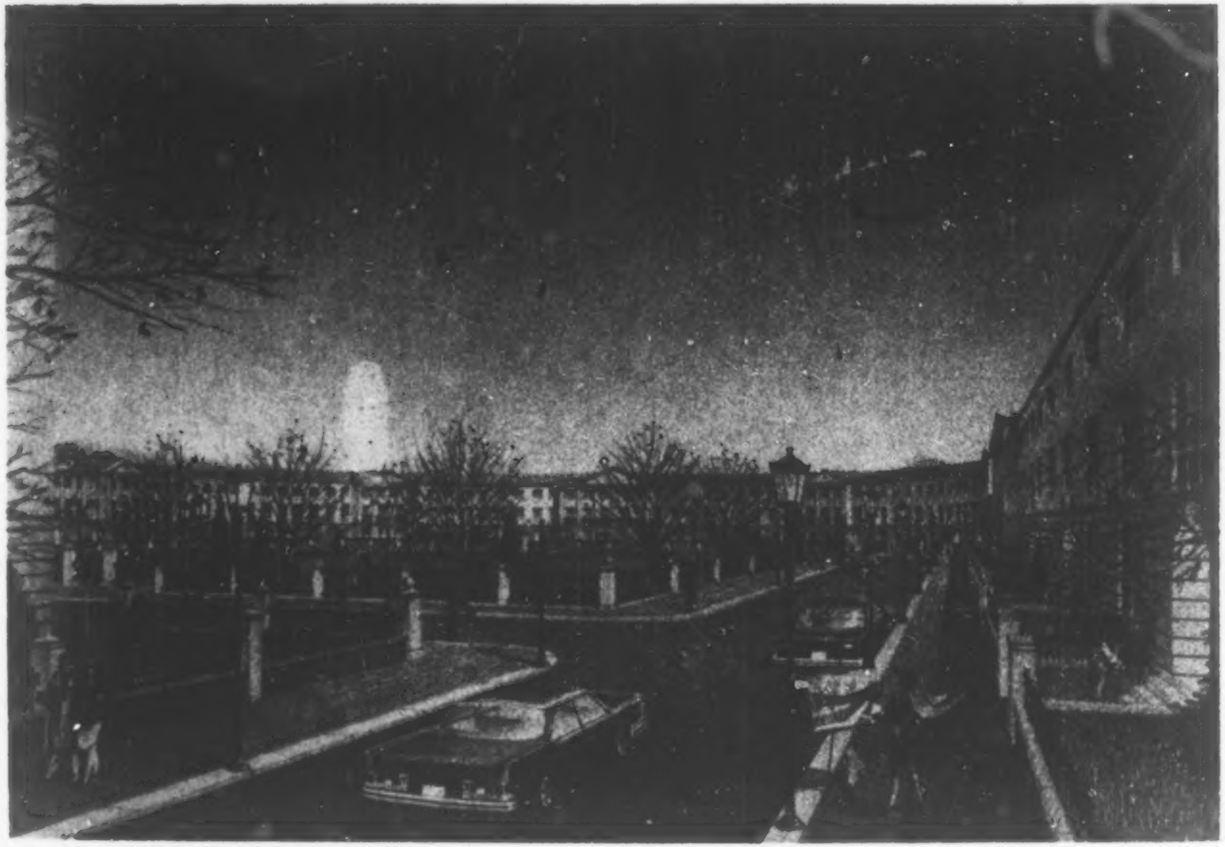


The waterfront promenade is a broad 12-foot wide walkway connecting the entire length of the shoreline, which is in excess of a mile, with the National Park Service land to the north.

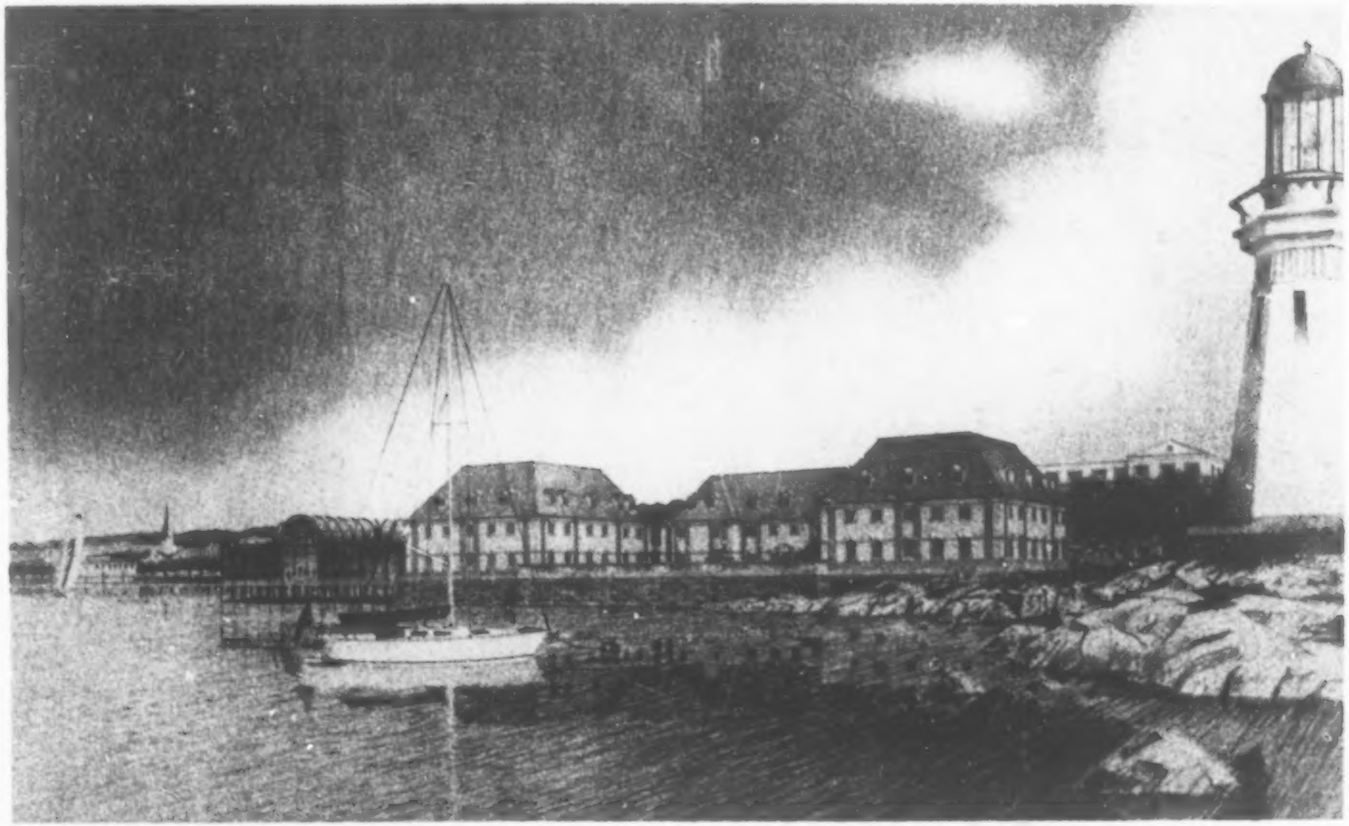
Featuring a large waterfront plaza, the community center will be a gathering place for the public to attend concerts, meetings and other community activities, with convenient shopping facilities nearby.



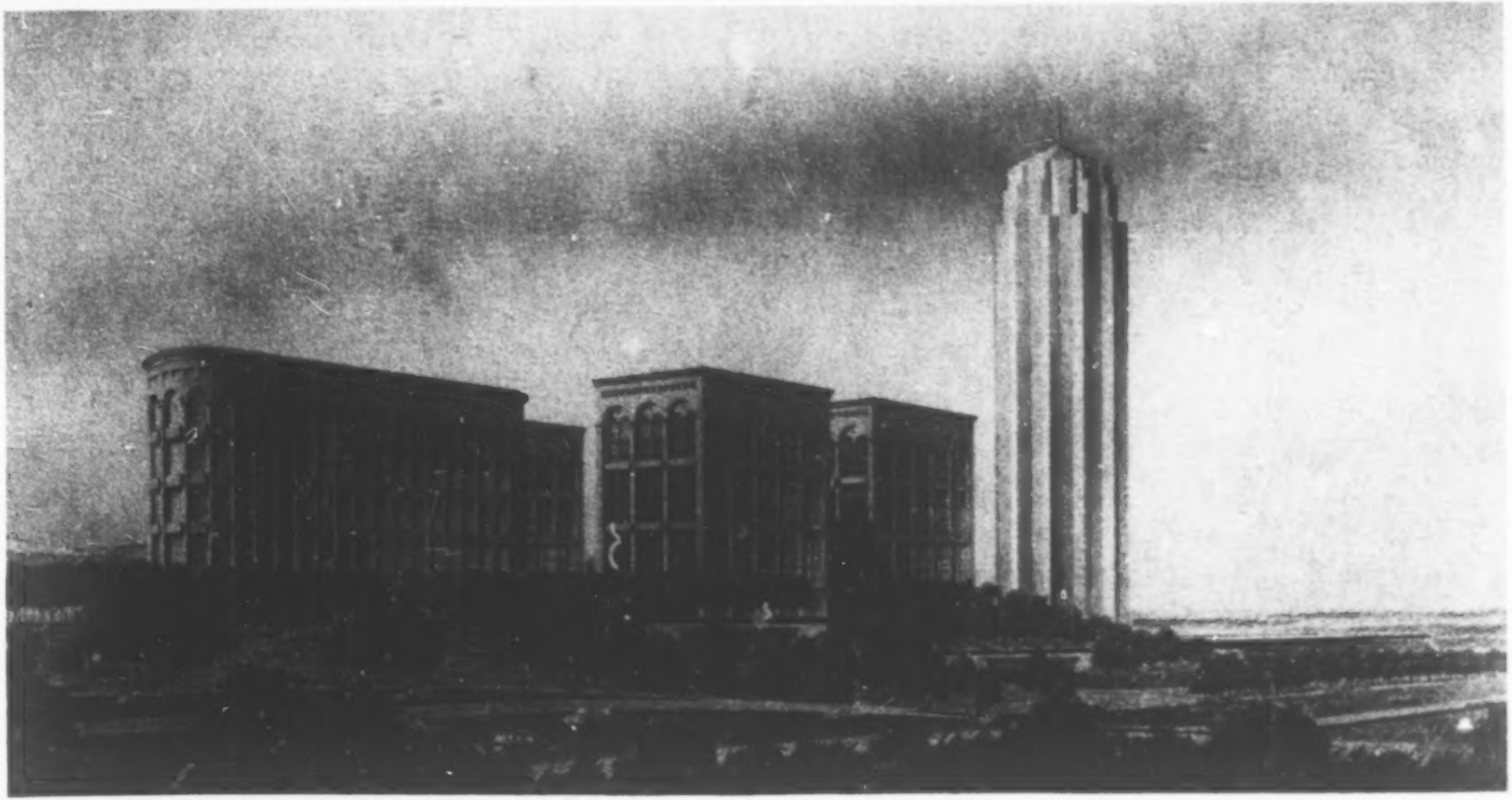
In designing residences for this unique shoreline setting, the architects drew upon the stately Georgian style of 18th Century England: The Great Crescent of Bath, Regent's Park in London, Adelaide in Brighton. Note the private parks attendant to these residential units.



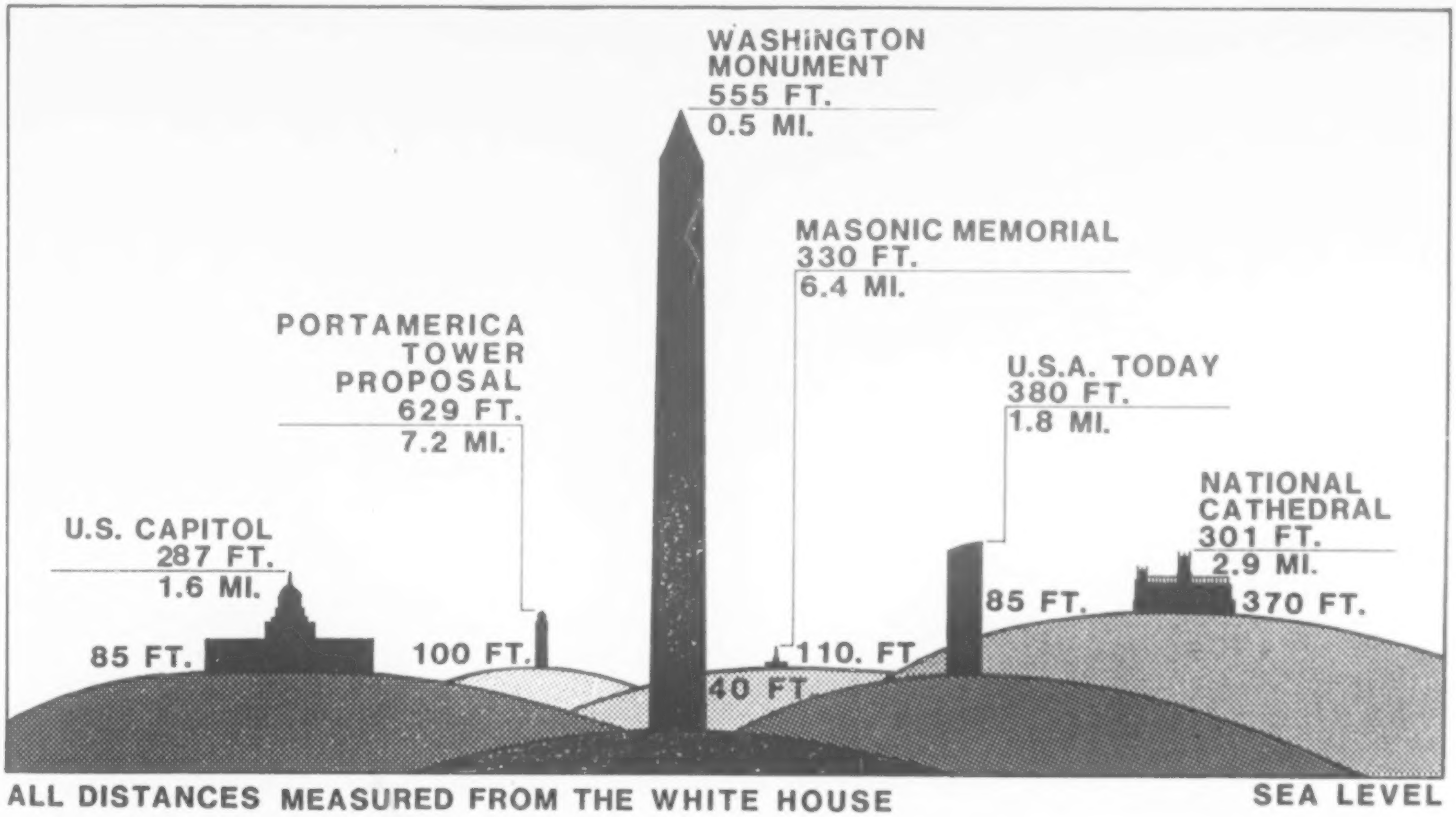
1,200 low-rise apartments and 3-story villas are planned, clustered around a series of sculptured English parks and gardens. The units will be of exceptional quality, ranging in size from 3,500 to 5,000 square feet, with every convenience.



A 75-suite luxury "country inn" will be a stylish hideway for vacations, corporate retreats or perfect accommodations for guests of Oxford Landing residents. The "crystal" restaurant will be the perfect place to dine and enjoy the views of the graceful curving bay. (This restaurant constitutes a riparian development that is subject to the approval of the NCPC)



The World Trade Center tower will be the centerpiece of an international business complex that will also include a 2-phase 700-room hotel and three or four commercial office buildings. Approximately 1.7 million square feet of office space with structured parking for over 5,000 cars will be available.


WASHINGTON MONUMENT
555 FT.
0.5 MI.
MASONIC MEMORIAL
330 FT.
6.4 MI.
PORTAMERICA TOWER PROPOSAL
629 FT.
7.2 MI.
U.S.A. TODAY
380 FT.
1.8 MI.
NATIONAL CATHEDRAL
301 FT.
2.9 MI.
U.S. CAPITOL
287 FT.
1.6 MI.
85 FT.
100 FT.
110. FT
40 FT
85 FT.
370 FT.
ALL DISTANCES MEASURED FROM THE WHITE HOUSE
SEA LEVEL

Washington, D.C. 20515

Statement of
George M. White, FAIA, Architect of the Capitol
before the
Committee on Environment and Public Works
United States Senate
October 1, 1986

In order to establish the extent of my credibility to comment regarding the PortAmerica proposal, it appeared to me to be useful to mention that, in addition to my having practiced architecture in the private sector for twenty years and then having been Architect of the Capitol for almost sixteen years, I have been directly involved in the more specialized field of urban design in the following instances:

1. The preparation of the Master Plan for the U. S. Capitol, which was awarded an Institute Honor by the American Institute of Architects this year;
2. Chairman of the Design Committee of the Board of Directors of the Pennsylvania Avenue Development Corporation;
3. Member of the District of Columbia Zoning Commission;
4. Member of the Advisory Council on Historic Preservation;
5. Chairman of an Australian Parliamentary-appointed committee to examine the planning, urban design, development and administration of the Australian capital city (Canberra).

The protection of the Federal interest in the urban design of our nation's capital and its environs was recognized by the founders of our country by a provision in the Constitution (Art. 1, Sec. 8, Cl. 17) establishing a District ten miles square for the seat of government. After the acceptance by the Congress in 1790 of the lands ceded by Maryland and Virginia for that purpose, George Washington himself established by proclamation on March 30, 1791, the lines and bounds of the District of Columbia. The original District extended beyond the ridge of hills on the Virginia side of the Potomac in order to control the vistas in all directions. The design of the city by Pierre L'Enfant, which based its baroque visual and esthetic effect on the broad avenues and distant vistas, is corroboration of the overall plan as envisaged by those incredible gentlemen whose vision extended not only to a design for a new kind of government in which liberty and democracy could flourish, but also to the physical environment in which the seat of government could be reflected and symbolized.

As is well known, later political considerations caused the retrocession fifty-five years later, on July 9, 1846, of the land on the Virginia side, thus laying the basis for what is now the unfortunate visual despoliation of the magnificent view down the Mall toward the Washington Monument and Jefferson Memorial by the ugly backdrop of the symbols of man's selfishness and greed as evidenced by the high-rise building litter in Roslyn. Early efforts to prevent such a travesty were defeated by the jurisdictional lines that were established without consideration for the preservation of the beauty for which the monumental area of our capital is known. It is an illustration of how thoughtlessness and lack of sensitivity can result in permanent damage to man's opportunity to enjoy his physical environment and, in this case, the symbols of his government.

And now we are faced with an even greater threat. The beginning of a program to surround the capital with New York type skyscrapers. For we should make no mistake about it: the ingenuity and competitiveness of private developers, together with the incentives for profit, all of which are desirable characteristics when properly placed, will, if not controlled, proceed with unbridled force to overwhelm the community. The examples are too numerous and well-known to mention. That is not to say that such conduct is necessarily bad in and of itself. On the contrary, it has helped to build wealth and prosperity in our nation. But when such conduct conflicts with other more compelling goals, some controls must be effected. The concept of zoning in urban areas is an obvious example of the kinds of controls that our society has felt necessary.

But the skyscraper in PortAmerica, which could be more properly entitled "DistortAmerica," is not simply a slightly higher building in a city of high buildings, or even a higher building in an area of dispersed high buildings. It stands alone as a screaming monster shouting to be heard and saying "look at me and tremble, all who are within seeing distance."

From the monumental core in the beauty of our city with its monuments to liberty and democracy and to the great people who established them, we will see a new monument on the horizon--a monument to arrogance. For greed cannot be the motivation here. Surely the remainder of this vast project provides more than enough wealth to satisfy even the most extensive desires in that regard.

But there is an economic factor to be considered. It is often said, particularly in urban areas, that taller buildings are needed because it is not economical to build them smaller. What is meant is that many square feet of building area are needed in order to amortize high land costs. Obviously, a one-story building is economical if the land is free. We thus find ourselves having to resist the pressures brought to bear on our built environment by the land speculators. If a developer pays too much for the land, he asks for excessive area within the structure which he says is otherwise uneconomical to build. And if he can get an excess of area beyond what is necessary even for that, he has a windfall. The continuing pressures to increase the Congressionally imposed limitation on the height of buildings in the District of Columbia is a corroborative example of that approach.

There are, of course, other reasons, equally as flawed, that are offered by developers as indications of the necessity for the goals they are trying to achieve. The real question is what is the most compelling reason for judgment in terms of the true benefits to society--all society that is affected by the decision. In this instance the local community is said to believe that its financial needs are greater than those of the federal interest in preserving the vistas from the capital for this and future generations of Americans. As a result, the issue is said to be joined as a local interest/federal interest question. Surely it cannot be that the parochial interests of the local community are not well answered by the remainder of the development, or by the river-front site development together with several smaller buildings on the skyscraper site that would not intrude on the sensitivities of their fellow citizens.

But these tend to be contrary points of view that lead to opposing points of view and so on ad infinitum. The real issue is one of beauty or rather the destruction of beauty. The often quoted expression about the eye of the beholder is perhaps adequate for temporal matters, but vision and wisdom must be added when one is concerned with the ages. What would the city be like if the mosquito-laden canal and swamp that existed on the Mall site had not been replaced by the McMillan design that we now enjoy? What would the city be like if the Virginia land had not been retroceded in 1846? What would the city be like if it had been permitted to grow helter-skelter without the plan that L'Enfant created under the direction of those great visionaries Washington and Jefferson? What will the city be like if it becomes surrounded by high-rise structures of whatever design?

In my judgment, the bill recently introduced in the Senate, S. 2537, is not only a valid and proper exercise of the power vested in the Congress by the Constitution to protect the Federal interest, but is indeed a minimal, if any, interference in local matters. The developer, if he wishes, may still build his building, a condition which, in my opinion, should be prevented by more positive means. I personally would not trade dollars for the long-term adverse effects that development such as this will have on the urban design characteristics of the nation's capital. But it appears to be one of the few avenues open for that protection to occur at all, and therefore, I believe that the enactment of the bill into law will be a major benefit to the entire community of American people.

NATIONAL CAPITAL PLANNING COMMISSION
1325 G STREET N.W.
WASHINGTON, D.C. 20576

RESPONSE
Of
REGINALD W. GRIFFITH
EXECUTIVE DIRECTOR
NATIONAL CAPITAL PLANNING COMMISSION
To
QUESTIONS ON PORTAMERICA
From the
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

October 1, 1986

1. The National Capital Planning Commission's Statutory Responsibilities with Respect to the PortAmerica Project.

The Commission's statutory responsibilities with respect to the PortAmerica Project derive from the National Capital Planning Act of 1952, as amended, and Public Law 99-215. Section 2(a)(1) of the Planning Act provides for the creation of the Commission "as the central Federal planning agency for the Federal Government in the National Capital, and to preserve the important natural and historic features thereof...." One of the ways in which the Commission carries out this mandate in the National Capital Region is to monitor local rezoning and site plan review proposals to identify what impacts they may have on Federal lands and interests. If Federal interests are identified, the Commission often transmits comments and/or recommendations to the local zoning body.

In addition, Section 4(a) of the Planning Act charges the Commission "with the duty of preparing and adopting a comprehensive, consistent, and coordinated plan for the National Capital, which plan shall include the Commission's recommendations or proposals for Federal developments or projects in the environs." The Commission has adopted eight Federal elements of the Comprehensive Plan for the National Capital, and the PortAmerica proposal was evaluated within the context of these elements.

Public Law 99-215 authorizes the Secretary of the Interior to convey certain Federal parklands on the north shore of Smoot Bay to the Maryland National Capital Park and Planning Commission (M-NCPPC). The Act also requires that the owner of land adjacent to the parkland to be transferred seeking "access" across the transferred land must meet several conditions, including compliance with the terms and conditions of a Memorandum of Understanding (MOU) signed by the Commission and the developer of the proposed PortAmerica project, JTL Enterprises, Ltd. The MOU establishes certain development restrictions on the proposed PortAmerica Waterfront development. The law requires the National Capital Planning Commission (NCPC) to determine whether the owner of the adjacent land, in this case JTL Enterprises, Ltd., is in compliance with the MOU, and, therefore, may be granted access across the transferred parkland by the M-NCPPC.

2. Specific NCPC Appproval/Disapproval Procedures Affecting the Project.

The Commission has no specific approval or disapproval authority affecting the entire PortAmerica project. The Commission's involvement in the related local rezoning and site plan reviews is advisory or recommendatory only. However, as stated above, pursuant to Public Law 99-215, the Commission will have to determine whether the plans for the "Waterfront Parcel" comply with the terms and conditions of the Memorandum of Understanding of May 7, 1985, before the M-NCPPC may grant access across the transferred park land to JTL Enterprises, Ltd.

3. NCPC Coordination with Other Federal Agencies.

The Commission has coordinated with other Federal agencies. It consulted with the National Park Service prior to testifying on both the proposed M-X-T zoning and on the proposed conceptual site plan applications for PortAmerica before the Prince George's County Council and Planning Board. It also consulted with the National Park Service prior to testifying on the proposed parkland transfer legislation. The National Park Service, the General Services Administration, and the Department of Defense are all represented on the Commission. These members participated in the deliberations on PortAmerica.

With regard to the possible environmental impacts of PortAmerica, the Commission staff initially consulted with the following ten other Federal agencies potentially involved in this project—National Park Service, Federal Highway Administration, Federal Aviation Administration, U.S. Army Corps of Engineers, Advisory Council on Historic Preservation, U.S. Fish and Wildlife Service, Commission of Fine Arts, National Marine Fisheries Service, Council on Environmental Quality, and Environmental Protection Agency. A meeting with this group was held on April 16, 1986. More recently on August 4, 1986, the Commission staff met with representatives of the U.S. Army Corps of Engineers, the National Park Service, the Federal Aviation Administration and the Federal Highway Administration--the agencies with a potentially extensive role in the proposal. Consultations with these agencies and with the Council on Environmental Quality (CEQ) are continuing with the objective of achieving a consolidated Federal environmental review. The Commission staff has recently asked the CEQ, in accordance with its regulations, to determine which Federal agency should be the lead agency for purposes of compliance with the National Environmental Policy Act.

4. NCPC Actions and Applicable Processes Thus Far Regarding PortAmerica.

To date, the Commission has taken the following actions in regard to Port America:

a. On May 7, 1985, the Commission executed a Memorandum of Understanding with JTL Enterprises, the developer of the PortAmerica site. This resulted from Mr. Lewis approaching the Commission in order to reach an agreement on development of the "Waterfront Parcel," and to determine the Commission's position with respect to legislation to transfer the adjacent Federal park land to the M-NCPPC. The purpose of the

Memorandum, which only covered the development of the "Waterfront Parcel," was to maintain the financial and architectural flexibility of Mr. Lewis's project while assuring the Commission that the land would be developed with regard for Federal interests along the shoreline of the Potomac.

b. On July 12, 1985, the Commission appeared before the Senate Subcommittee on Public Lands, Water and Resource Conservation in support of the proposed transfer of Federal parklands in the Smoot Bay area to the M-NCPPC.

c. On July 18, 1985, the Commission appeared before the House Subcommittee on Parks and Recreation in support of the proposed transfer of Federal parklands in the Smoot Bay area to the M-NCPPC.

d. On January 9, 1986, in an Executive Session meeting of the Commission, Mr. Lewis and his architects described the proposed concept plan for both the waterfront and beltway parcels. At that session there was considerable discussion of the then 50-story tower proposal with Commission members and staff objecting to and criticizing the tower.

e. On May 1, 1986, the Commission testified before the Prince George's County Planning Board in support of the Conceptual Site Plan Application for PortAmerica, except for the proposed 52-story World Trade Center, the height of which it opposed.

f. On July 7, 1986, the Commission testified before the Prince George's County Council in support of the Conceptual Site Plan Application for PortAmerica, except for the proposed 52-story World Trade Center, again opposing the proposed height.

The only other applicable processes that the Commission is currently involved in are consultations with other Federal agencies potentially involved in reviewing the environmental impacts of PortAmerica and in making determinations, issuing permits or approving some aspect of the proposal.

5. Opportunity for Public Participation and Review.

The Commission has provided the following opportunities for public participation and review in its consideration of the plans for PortAmerica:

a. On April 3, 1986, the Commission reviewed the Conceptual Site Plan Application and heard from interested parties.

b. On September 4, 1986, the Commission heard from the following witnesses regarding PortAmerica: Mr. Parris Glendening, the Council Executive of Prince George's County, Mr. James Lewis, the developer of PortAmerica, and persons representing the National Trust for Historic Preservation, the National Parks and Conservation Association, the Advisory Council on Historic Preservation, the Committee of 100 on the Federal City, and the Commission of Fine Arts.

c. On October 2, 1986, the Commission is scheduled to review and make comments on the Federal Aviation Administration's notice of its aeronautical study of proposed construction at PortAmerica. The meeting is open to the public, and interested persons may register to testify.

6. Timetable for Additional NCPC Procedures Regarding PortAmerica.

a. On October 2, 1986, the Commission is scheduled to review and comment on the Federal Aviation Administration's Notice of Aeronautical Study of proposed construction at PortAmerica.

b. The Commission will review and comment to Prince George's County on the final site development plans for each of the phases of the PortAmerica project. The schedule for this review is dependent upon the developer's schedule for the preparation and submission of the various staging plans to Prince George's County and the number of stages he chooses.

c. The Commission will review and comment on the proposed land use plan for the transferred park property prepared by the M-NCPPC pursuant to P.L. 99-215. The schedule for this review is dependent upon the transfer of land, on M-NCPPC's schedule for the preparation and submission of the plan, and on the availability of adequate environmental documentation.

d. The Commission will review and comment on the U.S. Army Corps of Engineers Public Notice of an application by the developer for issuance of Section 10 and Section 404 permits for thePortAmerica project. The schedule for this action is dependent on when the developer applies to the Corps for these permits.

e. The Commission will assess the environmental impacts of the proposal as a basis for making the determination of compliance with the Memorandum of Understanding of May 7, 1985, as required by Public Law 99-215. The schedule for this activitiy depends on how long it takes the Commission and the other affected Federal agencies to complete their environmental responsibilities under the National Environmental Policy Act.

f. Pursuant to P.L. 99-215, the Commission will make the determination of compliance by the developer with the terms and conditions of the Memorandum of Understanding executed on May 7, 1985. The schedule for that determination is dependent on the developer's schedule for the final development plan and for conveyance to the Commission of "an easement in perpetuity which shall run with the land, incorporate the restrictions on development contained in the memorandum of May 7, 1985, and incorporate any other land restrictions imposed by Prince George's County."

NATIONAL CAPITAL PLANNING COMMISSION

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U.S. House of Representatives
Honorable Ronald V. Dellums

Mayor, District of Columbia
Honorable Marion S. Barry, Jr.

Chairman, Council of the
District of Columbia
Honorable David A. Clarke

EXECUTIVE DIRECTOR
Reginald W. Griffith

In Reply Refer To:
NCPC File No. 0424

September 30, 1986

Ms. Dinah Bear
General Counsel
Office of Environmental Quality
722 Jackson Place
Washington, D. C. 20006

Dear Ms. Bear:

The Commission, after discussions with various Federal agencies involved in the proposed PortAmerica project located in Prince George's County, Maryland, has been unable to resolve the question of lead agency with respect to consolidating all required environmental review processes. Therefore, in accordance with 40 C.F.R. 1501.5(e) of the Council on Environmental Quality regulations, we are requesting that the Council determine which Federal agency shall be the lead agency. A copy of this request will be sent to each potential lead agency, as required by the Council's regulations.

The PortAmerica project consists of two distinct parcels. These parcels contain approximately 442 acres of land and water area. As proposed, the development would include at least 1,700,000 square feet of office space, 410,000 square feet of commercial retail including restaurant space, 860,000 square feet of hotel space (1025 rooms), 300,000 plus square feet of indeterminate use, 1200 dwelling units and a marina development of 250-500 slips. A total gross floor area of approximately 7.3 million square feet is proposed.

The north or "Beltway Parcel" of 82 acres is proposed to contain the 40-42 story "World Trade Center Washington, D.C.", with up to 700,000 square feet of office and related space. This parcel would also contain a proposed 600-room, 12-story hotel of 350,000 square feet, 600,000 square feet of office space in three 15-story structures and 200,000 square feet of retail commercial space to be distributed among the office buildings and the hotel. Most of the parking would be in several parking structures, two of which will have seven levels and flank the 40-42 story office building.

The south or "Waterfront Parcel" of 361 acres (including 240 acres of submerged land) would contain 176,000 square feet of retail space, 250-500 boat slip marina(s), a 350-room hotel, a jitney/ferry terminal, a 20,000 square foot community center with accompanying 24,000 square feet of neighborhood commercial, and a 75-room inn with a nearby restaurant and lighthouse at Rosier Point, the southernmost portion of the site. This parcel will also contain 1200 dwelling units, including single-family townhouses and condominum/apartment style multi-family units. A major split-level walkway system serving as the spine of the community would be located along the waterfront.

Based on information, including plans, prepared by the developer and submitted to the Prince George's County Planning Board and County Council, several Federal agencies could be involved in the project. It is our understanding that, to date, only the Federal Aviation Administration (FAA) and the National Park Service (NPS) either have been asked to take or have taken formal actions relating to the proposed project. As planned, the project would require the Corps of Engineers' (COE) approval to dredge and place fill within the waters along the shoreline. Federal Higdway Administration (FHWA) approval would be needed to connect the project's internal road network to the Interstate freeway system, Interstates 95 and 295. This Commission would be required to determine whether the waterfront development complies with a Memorandum of Understanding, signed by the Commission and the developer of the proposed project, before an access road to the Waterfront Parcel could be constructed across parkland to be transferred to the Maryland-National Capital Park and Planning Commission (MNCPPC) from the NPS. The NPS has been directed in Public Law 99-215 to convey the land to MNCPPC. The FAA is responsible for evaluating the airspace navigation effects of any tall structures located on the site (such as the tower proposed for the Beltway parcel) and determining whether such structures constitute a hazard.

The NPS has concluded that its action related to the proposed project is not subject to NEPA. Four other agencies have identified a potential NEPA responsibility in regard to the proposal. They are this Commission, the COE, the FHWA, and the FAA. Of these, FAA has determined that its action qualifies as a categorical exclusion under its environmental procedures. It is our understanding that the other actions to be taken by the remaining three agencies would require either an environmental assessment or possibly an environmental impact statement depending upon the impact of the project.

This Commission believes it would be inappropriate for it to be lead agency because of its widely known opposition to the office tower to be located on the Beltway Parcel, and its functional responsibilities related to the MOU. It does believe, however, that a consolidated, comprehensive environmental document is necessary for the PortAmerica project in light of the numerous Federal and state agencies likely to be involved at various stages of the project's development. Attached is this Commission's response to the five criteria for lead agency listed in Section 1501.5(c) of the CEQ regulations. Also included with this letter are the responses from the four other agencies identified as possible candidates for lead agency.

If you have any questions pertaining to our request for the CEQ to arbitrate the lead agency designation for the PortAmerica project, or the basis for the Commission's position relating to lead agency, please contact me.

Sincerely,

Reginald W. Griffith

Reginald W. Griffith
Executive Director

Enclosures

cc: Commission Members
Manus J. Fish, NPS
Colonel Martin W. Walsh, Jr., COE
Donald D. Engen, FAA
R. D. Morgan, FHWA

NATIONAL CAPITAL PLANNING COMMISSION
1325 G STREET N.W.
WASHINGTON, D.C. 20576

PortAmerica Project
Prince George's County, Maryland

(1) Magnitude of agency's involvement

Up to this point, the Commission's official involvement in the PortAmerica project has been relatively limited. The most recent action taken by the Commission related to submission of comments on the proposed Conceptual Site Plan, subsequently approved, with conditions, by the Prince George's County Planning Board and County Council. The Commission is expected to respond in the near future to the Federal Aviation Administration's public notice requesting comments on its required airspace navigation determination relating to the office tower located on the Beltway parcel.

The Commission's statutory involvement in the project pertains to its compliance determination required under Public Law 99-215 (see Item 2 below).

(2) Agency's project approval/disapproval authority

P.L. 99-215 requires that an owner of land adjacent to the transferred land seeking "access" across the transferred land must meet several conditions, including compliance with the terms and conditions of the Memorandum of Understanding (MOU) signed by the Commission and the developer of the proposed PortAmerica project, JTL Enterprises, Ltd. The MOU establishes certain development restrictions on the proposed PortAmerica Waterfront development on Smoot Bay. The law requires the Commission to determine whether there is compliance with the MOU by the owner of adjacent land, in this case JTL Enterprises, Ltd.

The Commission's action will partially influence, and even facilitate development of the PortAmerica project, but only to the extent to which the developer requires access across the transferred parkland to serve his proposed development. If the developer were able to obtain adequate access to the waterfront by some other means, the Commission conceivably would not be asked to make a compliance determination and consequently would have no approval role whatsoever regarding the project.

(3) Agency's expertise concerning the action's environmental effects

The Commission is a Federal land use planning agency whose principal functions relate to land use planning and program preparation and the review of planning-related matters in the National Capital Region (NCR) (which includes Prince George's County) as they affect the Federal Establishment or other Federal interests. The Commission's special expertise with respect to the environmental effects of the PortAmerica project are primarily in the areas of land use planning and regulation, circulation and physical development; identifying the effects of development and land use on architectural, historic, and archeological resources; and in planning water resource developments in stream valley parks related to the Potomac River. In addressing environmental questions, the Commission relies heavily on other agencies whose expertise lies in assessing the specific environmental effects of projects on air quality, water quality, environmentally sensitive areas (e.g., floodplains, wetlands), transportation systems, water resources, fish and wildlife, and historic and archeological resources.

(4) Duration of agency's involvement

As the central planning agency for the Federal Government in the NCR, the Commission has been involved at various conceptual planning stages of development of the PortAmerica project. On December 2, 1982, the Commission commented on the proposed rezoning of the site, now proposed for the PortAmerica project, from Rural Residential (R-R) to Mixed-Use-Transportation Oriented (M-X-T). On May 7, 1985, the Commission entered into the MOU with JTL Enterprises, Ltd. Subsequently, on May 1, 1986 and on July 7, 1986, the Commission commented on the conceptual site plans then under consideration by the Prince George's County Planning Board and the County Council, respectively.

If the developer seeks access across the transferred land, the Commission must make its MOU compliance determination as provided for in P.L. 99-215. In addition, as an agency concerned with Federal interests which may be adversely impacted by the issuance of other Federal permits and/or approvals required for the project, the Commission expects to be invited to comment on numerous aspects of the project before permits, licenses, or approvals are issued (e.g., Corps of Engineers' permits, FAA airspace determinations).

(5) Sequence of agency's involvement

The terms of the MOU require the Commission to determine compliance with certain provisions of the agreement based on findings of other Federal and state regulatory review processes (e.g., Corps of Engineers). Those areas for which the Commission has said it will rely heavily on guidance from other agencies with special expertise in making its determination involve, for example, the effects of the shoreline development on aquatic resources. Therefore, in order for the Commission to complete its compliance determination, as provided for in P.L. 99-215, related information from other agencies will be reviewed and evaluated to serve as a basis for the Commission's determination.

United States Department of the Interior

NATIONAL PARK SERVICE
NATIONAL CAPITAL REGION
1100 OHIO DRIVE, S. W.
WASHINGTON, D.C. 20242

N.C.P.C.
'86 SEP 22 P3:17

0424
ENV. AE

L30(NCR-LUCE)

16 SEP 1986

Mr. Reginald Griffith
Executive Director, National Capital
  Planning Commission
1325 G Street, N.W.
Washington, D.C.

Dear Mr. Griffith:

Thank you for your letter of August 18, 1986, concerning which Federal agency should be the lead agency regarding the PortAmerica project. We strongly support and endorse the need for a coordinated Federal response to evaluating the environmental impacts which would occur because of this project, and feel that a single coordinated environmental documentation process in which all affected Federal agencies participate would be most effective.

In regard to your specific questions concerning whether or not we should be lead agency, we would respond by stating the following:

1. Magnitude of the agency's involvement

   Our involvement for this project is limited to implementation of a portion of the requirements of Public Law 99-215, which was passed by Congress and signed by the President on December 26, 1985. That portion which impacts the National Park Service is the section authorizing and directing the Secretary of the Interior to transfer approximately 55 acres of Federal parkland to the Maryland-National Capital Park and Planning Commission who, in turn, can allow an access road to be build to serve PortAmerica, but only after certain conditions have been met.

2. The agency's project approval/disapproval authority.

   We have no legal authority to approve or disapprove the PortAmerica project.

3. The agency's expertise concerning the action's environmental effects.

   We have expertise that can assist in evaluating the visual impacts this project could have on the surrounding areas, including the Monumental Core of our Nation's Capital and other Federal lands managed by the National Park Service, such as Oxon Hill Children's Farm, Fort Foote, and the Mount Vernon Memorial Highway.

4. Duration of the agency's involvement.

   Our involvement is limited to the amount of time required to transfer the 55 acres of land to the Maryland-National Capital Park and Planning Commission. Draft deeds and plat maps have already been sent to that agency.

5. Sequence of the agency's involvement.

   We are actively involved at the present time in implementing that portion of P.L. 99-215 which requires the Secretary of the Interior to transfer parklands to the Maryland-National Capital Park and Planning Commission.

As shown above, the National Park Service views its role as being very limited, and does not feel it appropriate to be lead agency in regard to the PortAmerica project. While we believe the early involvement of the Federal Highway Administration and the Federal Aviation Administration makes the Department of Transportation the most logical organization to serve in the lead agency role, we recognize the responsibility of all other affected Federal agencies to assist fully in the environmental documentation process.

Thank you for this opportunity to respond to your questions.

Sincerely,

Lowell V. Sturgill

Regional Director, National Capital Region

DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 1715
BALTIMORE, MARYLAND 21203-1715

N.C.P.C.
'86 SEP 19 A8:35

Operations Division

18 September, 1986

Mr. Reginald W. Griffith
Executive Director
National Capital Planning Commission
1325 G. Street, N.W.
Washington, DC 20576

Dear Mr. Griffith:

Reference your 18 August 1986 letter requesting information concerning NEPA lead agency selection for the PortAmerica project by James Lewis Enterprises, Ltd. of Alexandria, Virginia located along the Potomac River in Prince George's County, Maryland.

The Baltimore District has met with the developers' consultants and attorneys and made them aware of our permit requirements. To date, we have not received an application for the project. Without an application, it would be premature for us to make any determination regarding NEPA requirements pursuant to our regulatory authority. When and if an aplication is received for the PortAmerica project, we will undertake our NEPA review.

The PortAmerica project, as we currently understand it, is a large and complex development project requiring numerous federal, state, and local approvals which will require extensive coordination and cooperation, particularly among federal agencies.

The Corps of Engineers regulatory authority and responsibilities are primarily based on two laws.

1. Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) which prohibits the obstruction or alteration of navigable waters of the United States without a permit from the Corps of Engineers and

2. Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 301 of this Act which prohibits the discharge of dredged or fill material into waters of the United States without a permit from the Corps of Engineers. The details of the regulatory program are set forth in the Code of Federal Regulations (33 CFR parts 320 through 330). The vast majority of the proposed PortAmerica project is not within the Corps' regulatory responsibilities.

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Given your agency's mission and the fact that you have signed a memorandum of understanding (MOU) with the developer, and that the MOU has been incorporated into federal law, it appears, as discussed at the 4 August 1986 interagency meeting held in your offices, that NCPC would be the logical federal agency to oversee NEPA compliance for the PortAmerica project. The Baltimore District will cooperate and provide you information within the areas of our regulatory authority after a permit application is received for this project.

If you have any questions, my point of contact for this proposed project is Mr. E. Zell Steever, Ecologist at (301)962-4503 or Mr. Donald W. Roeseke, Chief, Regulatory Branch at (301)962-3670.

Sincerely,

Martin W. Walsh, Jr.

Martin W. Walsh, Jr.
Colonel, Corps of Engineers
District Engineer

OFFICE OF
THE ADMINISTRATOR

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
WASHINGTON, D.C. 20590

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FILE NO. 0424
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'86 AUG 27 P2:02

August 27, 1986

IN REPLY REFER TO:
HEV-12

Your Reference: NCPC File No. 0424

Mr. Reginald W. Griffith
Executive Director
National Capital Planning Commission
1325 G Street, N.W.
Washington, D.C. 20576

Dear Mr. Griffith:

Thank you for your August 18 letter providing an opportunity for Federal Highway Administration (FHWA) views on our National Environmental Policy Act (NEPA) responsibilities for the PortAmerica project. We have concluded that the FHWA should not be the lead agency for a Federal environmental impact statement. This conclusion is based on the following analysis of the criteria in 40 CFR 1501.5(c) for assigning lead agency responsibilities.

1. Magnitude of the agency's involvement.

   The FHWA does not have any current involvement in the PortAmerica project. We have been contacted informally by the project's developer to explore possible access to I-295 and I-95. Our only anticipated involvement would be to act on some future request for access to these Interstate freeways. Any such request would be made by the Maryland State Highway Administration (SHA) and would be made only if the Maryland SHA found the developer's request for new access satisfactory. No Federal-aid funding of a construction project is envisioned.

2. The agency's project approval/disapproval authority.

   The FHWA does not have any overall approval or disapproval authority on the PortAmerica project. Our only authority would be on any future request for access to the Interstate freeways. In exercising such authority, our review would be limited to the safety of the travelling public, the integrity of service, and traffic operations on the Interstate freeways and any environmental impacts of the interchange connections. The PortAmerica project could be constructed without direct access to the Interstate freeways because there is presently access to Oxon Hill Road. Consequently, any future FHWA responsibilities under NEPA would be limited to those effects of any proposed interchange ramps which require revision to present access agreements between the Maryland SHA and FHWA.

3. The agency's expertise concerning the action's environmental effects.

   The FHWA has expertise in highway safety, integrity of service, traffic operations and the direct effects of highway construction. The FHWA does not have expertise in the community planning aspects of major commercial developments, their purpose and need, and reasonable alternatives to such developments, the compatibility of such developments with historic resources, and the visual quality and aircraft safety ramifications of high towers.

4. Duration of the agency's involvement.

   Any FHWA involvement would be of very short duration and would be limited to the few days or weeks necessary to discharge any responsibilities under #2.

5. Sequence of the agency's involvement.

   The FHWA will not consider a request for access to the Interstate freeways until after the Maryland National Capital Park and Planning Commission has granted access across its land pursuant to Public Law 99-215. Consequently, our involvement would be after the National Capital Planning Commission has been assured that the proposed development complies with the May 7, 1985, memorandum cited in Public Law 99-215.

We appreciate the opportunity to provide our views to the Council on Environmental Quality.

Sincerely yours,

R D Morgan

R. D. Morgan
Executive Director

U.S. Department
of Transportation
Federal Aviation
Administration

Office of the Administrator

800 Independence Ave., S.W.
Washington, D.C. 20591

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Mr. Reginald W. Griffith
Executive Director
National Capital Planning Commission
1325 G Street, NW.
Washington, D.C. 20576

Dear Mr. Griffith:

We have carefully reviewed our environmental evaluation responsibilities in the context of the mandate of the National Environmental Policy Act and the related Council on Environmental Quality (CEQ) regulations, and your August 18 letter which focuses on the identification of a "lead agency." Using the criteria outlined in your letter, I do not believe the Federal Aviation Administration should be the lead agency with regard to the PortAmerica project.

Our involvement in the PortAmerica project is limited to evaluating the possible impact this project may have in relation to our responsibility for the safe and efficient management of the use of the navigable airspace and movement of air traffic through that airspace. Beyond this limitation is the fact that, in terms of an identifiable Federal action, we do not have authority to approve or disapprove this project, its location, its height, or other aspects of it. Our expertise involves the safe and efficient movement of air traffic throughout the navigable airspace. Our evaluation focuses on that potential impact, and when that evaluation is completed, our involvement ends.

In conjunction with our airspace and air traffic management responsibilities we have issued regulations concerning "Objects Affecting Navigable Airspace." These regulations, set out in 14 CFR Part 77, essentially require that FAA receive notice of particular kinds and types of construction so as to enable us to evaluate the effect of the proposed construction on existing operational procedures, evaluate whether those procedures should continue to be applied, and make arrangements to have the construction identified on appropriate air navigation charts. In connection with this or similar construction projects, the FAA receives notice of proposed construction, but does not approve, authorize, or disapprove the project.

The relationship between these evaluations and our environmental responsibilities was carefully considered in the development of FAA policy on this subject. The conclusion, reached in consultation and coordination with CEQ, was that for the reasons outlined above, FAA evaluations and determinations under Part 77 were categorically excluded from the environmental responsibility of the FAA.

Sincerely,

Donald D. Engen

Donald D. Engen
Administrator

TESTIMONY OF THE HONORABLE A. ALAN HILL
CHAIRMAN, COUNCIL ON ENVIRONMENTAL QUALITY
BEFORE THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE
OCTOBER 1, 1986

Good morning. I am happy to be with you today to discuss federal environmental assessment procedures as they affect the PortAmerica proposal, and the role of the Council on Environmental Quality (CEQ) in relation to those procedures and the PortAmerica project. As you know, the Council was established by the National Environmental Policy Act (NEPA) in 1970, and has, as one of its primary responsibilities, oversight of the NEPA process. NEPA has two primary aims: first, to ensure that a federal decisionmaker considers the potential environmental impacts of his or her actions, and secondly, to provide a means by which the public is informed and can participate in the evaluation of the environmental impacts of a proposal.

In Section 102 of Title I of NEPA, agencies are directed to prepare a detailed statement to accompany every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment. This statement must include:

"(i) The environmental impact of the proposed action,

"(ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,

"(iii) Alternatives to the proposed action,

"(iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

"(v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented."
(42 U.S.C. 4332(C)(i-v).

Shortly after CEQ's establishment in 1970, it issued interim guidelines for the preparation of EIS(s). These brief guidelines were finalized a year later. In 1973, CEQ revised the guidelines and published them in the Code of Federal Regulations. During the five years these guidelines were in effect, a number of problems developed in the implementation of the NEPA process. The most frequent complaints were the length of EIS(s) and the delays which the NEPA process was perceived to cause in the decision-making process. Additionally, the guidelines were not legally binding on the agencies, resulting in inconsistent agency practices and unpredictable reactions to the guidelines by the courts.

To improve this situation, President Carter, by Executive Order, directed CEQ to begin developing a set of binding regulations. This process was completed in 1978. An extensive effort was made by CEQ to obtain the views of all parties in both the public and private sectors who were affected by or interested in the NEPA process. The regulations were written specifically to reduce the delay and paperwork formerly associated with the NEPA process, while making the process more valuable to the decisionmaker. The regulations stated:

> "Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork -- even excellent paperwork -- but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment." 40 C.F.R. 1500.1(c).

In 1981, CEQ published a list of questions in the Federal Register asking the public and other agencies to respond to a series of questions about the NEPA process. 46 FR 41130 (1981). A summary of the comments received was made available to the public, after which we conducted a public meeting to gather further input on possible areas of improvement. As a result of this process, CEQ issued guidance in final form regarding six topics related to the NEPA process: scoping, categorical exclusions, adoption procedures for EIS(s) and environmental assessments, contracting provisions, selection of alternatives in licenseing and permitting situations, and tiering. 48 FR 34263 (1983). Following a lengthy process which included extensive public participation, CEQ has also recently amended that section of the NEPA regulations which deals with incomplete and unavailable information in the preparation of an EIS. 50 FR 15625 (April 25, 1986).

You have asked that I answer six questions about the NEPA process and CEQ's responsibilities in relation to the PortAmerica process. Let me address those questions in order:

1. The statutory responsibility of the Council on Environmental Quality (CEQ) specifically with respect to the PortAmerica project.

The Council's statutory responsibilities are, in general terms, oversight of the environmental impact assessment process as it is implemented on a generic basis by all federal agencies, as opposed to a specific role in the preparation of individual environmental impact statements or in the decision-making process about particular projects. For example, NEPA requires CEQ to "review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in Title I [of NEPA] for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, . . .". 42 U.S.C. 4344(3). The Environmental Quality Improvement Act of 1970, which establishes the Office of Environmental Quality to serve the Council, instructs the Director of the Office of Environmental Quality (who is the same person as the Chairman of CEQ) to assist, "in coordinating among the Federal departments and agencies those programs and activities which affect, protect and improve environmental quality".

42 U.S.C. 4372(d)(5).

This general statutory authority was given greater specificity by executive order and regulation. Executive Order 11514, issued in 1970, directed the Council to develop procedures to implement NEPA's requirement to assess the environmental impacts of major federal actions significantly affecting the quality of the human environment. In 1977, Executive Order 11514 was amended by Executive Order 11991 to direct CEQ to issue binding regulations for the implementation of the procedural provisions of NEPA by all federal agencies. The Council was specifically instructed to include in its regulations procedures for (1) the early prepartion of EIS(s) and (2) the referral to the Council of conflicts between agencies concerning the implementation of NEPA and Section 309 of the Clean Air Act, for the Council's recommendatios as to their prompt resolution. These regulations were issued in final form in 1978 and became effective in 1979. 40 C.F.R. 1500-1508. They are binding on all federal agencies. Again, however, neither the executive orders nor the regulations contemplate CEQ becoming involved in the environmental assessment of individual proposals on a routine basis; rather, CEQ's role is to formulate and oversee the regulations and policies which govern the action agency's compliance with NEPA. The regulations do provide for CEQ involvement in specific instances, which will be discussed below.

2. The specific CEQ approval/disapproval procedures affecting the project. CEQ has no approval authority over any aspect of the proposed PortAmerica project.

3. Coordination with other federal agencies. CEQ's role in the proposed PortAmerica project has and will occur only upon request from an interested party - usually, one of the involved federal agencies. These types of involvement are discussed in detail in questions four and six.

4. CEQ actions and applicable processes thus far regarding PortAmerica. To date, CEQ actions regarding the PortAmerica process have involved informal consultations, principally between the staffs of CEQ and the National Capital Planning Commission (NCPC). This past spring, CEQ's General Counsel's office was contacted by the NCPC's General Counsel's office for advice regarding the NEPA process. On April 16, 1986, the CEQ General Counsel attended a meeting at the NCPC, along with representatives from numerous other federal agencies which have some potential role in the PortAmerica project. At that meeting, there was discussion about the role of the various agencies in the NEPA process as it related to the PortAmerica project. CEQ participated by discussing the criteria for determining lead agencies and answering questions about the NEPA process.

On April 22, 1986, the CEQ General Counsel received a letter from the Executive Director of the National Capital Planning Commission asking for "informal views on the lead agency question as it pertains to the proposed PortAmerica project." Specifically, the letter asked for thoughts regarding good candidates for the lead agency designation, on the scope of a consolidated environmental document, on the level of commitment required from involved agencies, and other related questions. The General Counsel's response to that letter contains a detailed discussion regarding those issues. I am attaching a copy of this correspondence for the record.

Since this exchange of correspondence, CEQ's only involvement in the PortAmerica proposal has been some continued informal discussion at the staff level regarding the NEPA process.

5. Opportunity for public participation and review. The CEQ regulations require federal agencies to provide for extensive public participation during the environmental impact assessment process. In all cases, the regulations require

that federal agencies provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected. 40 C.F.R. 1506.6.(b). Subject to certain restrictions related to classified material and certain provisions of the Freedom of Information Act (5 U.S.C. 552), all environmental documentation in the NEPA process is to be made available to the public in a reasonable and timely manner. 40 C.F.R. 1506.6.

When an agency determines that it is going to prepare an EIS on a proposal, it must initiate an early and open process, known as "scoping" for determining the scope of issues to be address and for identifying the significant issues related to a proposed action. 40 C.F.R. 1501.7(a)(2). A related goal of the scoping process is to identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review. 40 C.F.R. 1501.7(a)(3). As part of the scoping process, the lead agency must invite the participation of all affected federal, state and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons. Other environmental review and consultation requirements should also be identified at this time so that they may be integrated with the EIS.

After the draft EIS is prepared, it must be circulated for a minimum of forty-five days for review and comment. Special efforts must be made by the lead agencies to inform potentially interested persons of the availability of the EIS. Although not required, many agencies hold hearings to receive comments on the draft EIS during this period.

When preparing the final EIS, the lead agency must assess and consider comments received in response to the draft EIS, and respond to all substantive comments. 40 C.F.R. 1503.4. The final EIS is then made available to all interested parties for at least thirty days before a final decision is made by the federal agency regarding the proposed action. 40 C.F.R. 1506.10(b).

If an agency prepares a briefer document, known as an environmental assessment, it must, to the extent practicable, involve environmental agencies, applicants, and the public, in the preparation of the document. 40 C.F.R. 1501.4(b). In all cases, (except certain narrow exceptions), the environmental assessments and findings of no significant impact are public documents. However, the specifics of public participation are left to individual agencies; generally, the level of participation is much less than that required in the development of an EIS.

CEQ's involvement in the public participation aspect of the NEPA process is to ensure that action agencies comply with the requirements of the regulations.

6. Timetable for additional CEQ procedures as they affect the PortAmerica project.

As mentioned earlier, CEQ's involvement in the NEPA process for a specific proposed action is triggered by a request from a party which is involved in that particular proposal. Besides our role in informal consultation and oversight of the NEPA process, there are two specific times when CEQ may be asked to become formally involved in a particular project. These situations are briefly described below:

a. Determination of lead agency: The CEQ regulations provide that a lead agency shall supervise the preparation of an EIS if more than one federal agency either proposes or is involved in the same action; or is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity. 40 C.F.R. 1501.5(a). The regulations permit the designation of joint lead agencies, 40 C.F.R. 1501.5(b), and cooperating agencies, 40 C.F.R. 1501.6, which have jurisdiction by law or special expertise with respect to an environmental issue which should be addressed in the EIS. 40 C.F.R. 1501.6.

When faced with a multi-agency preparation of an EIS, the potential lead agencies are supposed to determine by letter or memorandum which agency shall be the lead agency (or joint lead agencies) and which shall be cooperating agencies. If there is disagreement among the agencies, the following factors are to be used to determine lead agency designation. They are listed in order of descending importance:

1. Magnitude of agency's involvement.
2. Project approval/disapproval authority.
3. Expertise concerning the action's environmental effects.
4. Duration of agency's involvement.
5. Sequence of agency's involvement. (40 C.F.R. 1501.5(c)).

If federal agencies are unable to agree on which agency will be the lead agency, any of the agencies or persons concerned with the proposal may file a request with CEQ asking it to determine which federal agency should be the lead agency. We have been advised that we may receive such a request in respect to lead agency designation for the PortAmerica process. If such a request is received, our regulations permit any potential lead agencies identified in the letter to file a response to CEQ within a twenty day time period. The Council then would determine as soon as possible, but not later than twenty days after receiving the request and all responses to it, which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies. CEQ's decision would be guided by the five factors which are listed above 5 in determining the appropriate lead and cooperating agencies.

b. Predecision Referrals: The CEQ regulations establish procedures for referring to the Council federal interagency disagreements concerning proposed major federal actions that might cause unsatifactory environmental effects. Under section 309 of the Clean Air Act (42 U.S.C. 7609) the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of federal activites, including actions for which environmental impact statements are prepared. If, after this review, the Administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environmental quality," section 309 directs that the matter be referred to CEQ. Under section 102(2)(C) of NEPA and the CEQ implementing regulations, other federal agencies may make similar reviews of EIS(s). Criteria for referral include whether the referral raises an issue of national importance because of a threat to national environmental resources or policies or for some other reason, severity, geographical scope, duration, importance as precedents, and availability of environmentally preferable alternative. A referral must be made by the head of a federal department or agency, no later than twenty-five days after the notice of availability of the final EIS. Upon receiving a referral, CEQ has number of options, ranging from determinations that the issue is not appropriate for consideration by the Council to submitting the referral and the response together with the Council's recommendation to the President for action. Typically, if CEQ accepts the referral, it will hold discussions with the various interested parties and publish findings and recommendations in the Federal Register. These recommendations are not binding on the lead agency, although, of course, we hope that they are persuasive. We have not had any indication that there will be a referral in the Port-

America situation.

This concludes my testimony. I will be happy to respond to any questions.

NATIONAL CAPITAL PLANNING COMMISSION

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Chairman, Council of the
District of Columbia
Honorable David A. Clarke

EXECUTIVE DIRECTOR
Reginald W. Griffith

In Reply Refer To:
NCPC File No. 0424

April 18, 1986

Ms. Dinah Bear
General Counsel
Council on Environmental Quality
722 Jackson Place, NW.
Washington, D.C. 20006

Dear Ms. Bear:

Thank you for attending the meeting on April 16, 1986, concerning Federal responsibilities in the proposed PortAmerica project in Prince George's County, Maryland. We appreciate the comments and advice you provided in this session.

As you know, based on the discussion at the meeting, a number of Federal agencies have review and/or "licensing" responsibilities in regard to the project. In some instances, agencies are involved in the same action or closely related actions. In other instances, actions undertaken by individual agencies or groups of agencies are expected to be critical to later actions undertaken by other Federal agencies.

After considerable staff discussion, we have concluded that the Commission, because of its unique role as the central planning agency for the Federal government in the National Capital Region, the magnitude and duration of its involvement in this matter, and its jurisdiction as it pertains to the developer's access across the subject parkland, appears to be a strong candidate for lead agency designation. If need be, we are prepared to initiate the NEPA process and supervise the preparation of an environmental document, in accordance with the Council's regulations. However, in view of the number of Federal agencies involved, with either licensing responsibilities or special expertise with respect to particular environmental issues, we believe it would be beneficial to explore the lead agency question further. We ask that you provide the Commission with your informal views on the lead agency question as it pertains to the proposed PortAmerica project. Specifically, we would welcome your thoughts regarding the agency(ies) which appear to be good candidates for assuming

1325 G STREET, N.W. WASHINGTON, D.C. 20576 (202) 724-0174

primary responsibility for supervising the preparation of an environmental document as well as the agency(ies) which, in your view, may be more subordinate and therefore should be cooperating. Further, in conjunction with this point, we are interested in your opinions regarding the expected role of cooperating agencies in assisting the lead agency(ies) in preparing the environmental document, including the level of financial or other commitments they would be expected to provide. Because of your oversight role, your views are important on this issue particularly at this early point in the process.

Any views you might have on the scope of a consolidated environmental document, integrating a number of agencies' environmental review and consultation requirements, will be appreciated. As you know, individual agencies have varying interpretations regarding the range of issues and impacts which need to be discussed in an environmental document. Some agencies see their role as limited and therefore tend to narrow their focus to only those items directly related to their particular agency's review. Others appear prepared to take a more comprehensive approach, including related indirect effects within their scope.

Thank you again for your participation in our recent Federal interagency meeting. If you have any questions regarding our request, please contact Ronald E. Wilson on 724-0179 or Katherine B. Soffer on 724-0170.

Sincerely,

(for) Reginald W. Griffith
Executive Director

General Counsel
File

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W
WASHINGTON, D C 20006

May 9, 1986

Reginald W. Griffith
Executive Director
National Capital Planning Commission
1325 G Street, N.W.
Washington, D.C. 20576

RE: NCPC File No. 0424

Dear Mr. Griffith:

This letter is in response to your letter of April 18, 1986, concerning the proposed PortAmerica project in Prince George's County, Maryland. You have asked for my informal views on the question of what agencies should assume what level and scope of responsibility for compliance with the National Environmental Policy Act in relation to federal actions associated with the PortAmerica proposal. In addition, you asked about a consolidated environmental document to address this proposal, with participation from the various agencies.

First, let me briefly discuss the general responsibilities of lead and cooperating agencies, as set out in the CEQ regulations implementing the procedural provisions of NEPA. A "lead agency", as you already know, "means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement." 40 C.F.R. 1508.16. A lead agency or lead agencies designation is necessary when an environmental impact statement is to be prepared and there is more than one federal agency which, "(1) Proposes or is involved in same action; or (2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity." 40 C.F.R. 1501.5(a). If there are to be "joint lead agencies", at least one federal agency must serve as a lead agency; a state or local agency may act as a joint lead agency with that federal agency. 40 C.F.R. 1501.5(b). After a lead agency (or agencies) has been designated, that agency (or agencies) has the responsibility to solicit cooperation from other federal agencies that have jurisdiction by law or special expertise on any environmental issue that should be addressed in the EIS.[1] Where appropriate, the lead agency should seek the cooperation of state or local agencies with similar qualifications.

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[1] For your convenience, I am attaching three technical appendices to the NEPA regulations. Appendix I identifies the federal and federal-state agency NEPA contacts; Appendix II identifies federal and federal-state agencies with jurisdiction by law or special expertise on environmental quality issues; Appendix III lists federal and federal-state agency offices for receiving and commenting on other agencies' environmental documents.

A "cooperating agency" means any federal agency other than a lead agency which has jurisdiction by law (that is, an agency which has permitting or other approval authority) or special expertise with respect to any environmental impact involved in a proposal which is the subject of an environmental impact statement. A state or local agency with similar qualifications may also become a cooperating agency. 40 C.F.R. 1508.5. "Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency." 40 C.F.R. 1501.6. (emphasis added). Additionally, an agency may request the lead agency to designate it as a cooperating agency. If, in response to a request by a lead agency for assistance as a cooperating agency in preparation of an environmental impact statement, the potential cooperating agency replies that other program commitments preclude involvement in the action that is the subject of the environmental impact statement, that agency must submit a copy of such a statement to CEQ.[2]

After initial discussions with the potential involved agencies, the lead agency should determine by letter or by memorandum which agencies will undertake cooperating responsibilities. To the extent possible at this stage, responsibilities for specific isues should be assigned. The completion of such assignments should occur during the scoping process. 40 C.F.R. 1501.7(a)(4). Cooperating agencies may and generally should assume responsibility for developing information and preparing environmental analyses for portions of the environmental impact statement for those issues in which the cooperating agency has special expertise or jurisdiction by law.

Although my attendance at the April 16th meeting about the PortAmerica project gave me some idea about the potential involvement of the various federal agencies, I am not, at this time, offering firm conclusions about the appropriate role of each agency in the NEPA process. I will, however, offer the following observations.

In light of the National Capital Planning Commission's approval authority as it pertains to access across the site for development and, as you point in your letter, because of your "unique role as the central planning agency for the Federal government in the National Capital Region", it certainly appears to me that it would be appropriate for you to assume the role of a lead agency. In light of their permitting role for this proposal, the U.S. Army Corps of Engineers could possibly be an appropriate joint lead agency; however, this would be a voluntary assumption of responsibility and my sense from the April 16th meeting is that they would be more comfortable in the role of a cooperating agency. As a cooperating agency, the Corps would have a significant role to play in development of an environmental impact statement. As was evident at the meeting, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service have substantial concerns regarding the proposal, particularly related to potentially significant adverse impacts resulting from the proposed dredge and fill part of the PortAmerica project. Both of those agencies could appropriately be cooperating agencies; their roles would need to be explored more thoroughly with agency representatives. Even if they did not assume the formal role of a cooperating agency, they may wish to participate extensively in the scoping process and development of an environmental impact statement, if one is prepared. They may also have a role in regards to the 404 dredge and fill permit process.

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[2] Note, however, that this option is not available to agencies with jurisdiction by law, since by making such a statement, an agency takes itself out of any involvement in the action itself, not just preparation of the EIS.

Because of their role in granting interstate access approval, the Federal Highway Administration would appear to be have an important role as a potential cooperating agency. The Federal Aviation Administration may also be an appropriate cooperating agency; certainly, their involvement at some level would appear to be essential. The Advisory Council on Historic Preservation may wish to be and could be an appropriate cooperating agency. The National Park Service has also expressed to me interest in being a cooperating agency in areas of their expertise; for the PortAmerica project, this would mean primarily the area of visual impacts as they relate to neighboring federal properties in Maryland, as well as lands under federal jurisdiction across the Potomac River.

Additionally, I believe it would be wise to consider, at this stage, the potential involvement of state and local agencies which may have appropriate involvement in the federal NEPA process. In this regard, I note that the State of Maryland has a "little NEPA law" (the Maryland Environmental Policy Act). The appropriate contact for initial discussions is Bruce Gilmore, Intergovernmental Coordinator, Department of Natural Resources, Tawes State Office Building, Annapolis, Maryland 21401 (phone: (301) 269-2032). Maryland's role, if any, should be identified now; if, for example, the State of Maryland plans to prepare an environmental impact statement, that fact would have significant implications for planning of responsibilities for the NEPA process. I also note that the Maryland Historic Trust has expresed concerns about the impacts of the project and a willigness to work with the National Capital Planning Commission and other parties; their specific role needs to be clarified.

Further, the U.S. Environmental Protection Agency (EPA) has serious concerns about the proposal. While they have not yet defined the extent of their involvement, currently, EPA views itself as having a major role in the 404 dredge and fill permit process, and strongly believes that full compliance with NEPA will be essential for this proposal. They are also able and willing to offer technical assistance in the framework of EIS preparation on issues related to the protection of wetlands. You should also be aware that EPA reviews each agency's EIS and, under authority of Section 309 of the Clean Air Act, can refer to CEQ any action which the Administrator believes is unsatisfactory from the standpoint of public health or welfare or environmental quality, when those concerns relate to EPA's responsibilities. 42 U.S.C. 7609(a).

Let me reiterate that these comments are informal and based only on preliminary perceptions. There is, as I explained at the April 16th, meeting, a formal mechanism by which the Council may determine the lead agency for purposes of preparing an environmental impact statement. See 40 CFR 1501.5(e). This process is only appropriate if the potential lead agencies cannot resolve the issue. The CEQ regulations do not provide a mechanism, however, for CEQ determination on a case-by-case basis of cooperating agencies.

You also asked about the level of financial or other committments which other agencies would be expected to provide. First, in terms of joint lead agencies, the overall responsibilities of a lead agency may be divided up in any way which is agreeable to both of those agencies. If such a joint lead arrangement were to be considered, however, I strongly urge that such division of duties be agreed upon at an early stage and in writing. Otherwise, such a division of responsibilities can cause unnecessary confusion for members of the public and other parties who wish to become involved in the NEPA process.

In terms of cooperating agencies, such agencies are, to the extent possible, expected to make available staff support at the lead agency's request to enhance the lead agency's interdisciplinary capabilities (for example, Federal Highway Administration Staff to prepare analysis of impacts caused by the access route to the project). Generally, cooperating agencies are expected to use their own funds for their portion of the analysis. The CEQ regulations do provide that, "to the extent available funds permit," the lead agency shall fund those major activities or analyses it requests from cooperating agencies, and should include requests for such funds in their budget requests. 40 C.F.R. 1501.6(5). It appears to me unlikely that the National Capital Planning Commission would be in the position of funding such cooperating agency participation, although, of course, there is always the option of requesting a supplemental appropriation from Congress for such studies.

Finally, you asked about preparation of a consolidated environmental document which would integrate a number of agencies' environmental review and consultation requirements, and alluded to the varying interpretations which the federal agencies have regarding their role in the NEPA process. You are correct in that the NEPA process offers a very appropriate vehicle for consolidation of all environmental review processes. The CEQ regulations specifically state that, "Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork." 40 C.F.R. 1506.4. Identification of other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement is a required part of the scoping process. 40 C.F.R. 1501.7(a)(6). To the fullest extent possible, environmental impact statements should integrate the environmental impact analyses and related surveys and studies required by such acts as the Fish and Wildlife Coordination Act (16 U.S.C. Sec. 661 et seq.), the National Historic Preservation Act of 1966 (16 U..C. Sec. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.). and other environmental review laws and executive orders. 40 C.F.R. 1502.25(a). Further, the draft environmental impact statement must list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. 40 C.F.R. 1502.25(b).

While I am aware that various agencies have various views of their role in the NEPA process for this project, the question may be more academic than practical if the preparation of an EIS is initiated and the role of each involved agency is identified as part of a single, well-integrated document. While it is true that the lead agency (or agencies) would have to take the responsibility to see that all of the direct, indirect and cumulative impacts were analyzed in an EIS, many of those impacts fall directly within the purview of the various agencies who have a discrete "piece" of the proposal. Thus, if an EIS is prepared, I would expect the U.S. Army Corps of Engineers, for example, to take responsibility for analyzing the direct, indirect and cumulative effects of the dredge and fill aspects of the proposal (with the assistance of appropriate natural resource and environmental agencies). Similarly, the Federal Highway Administration should be prepared to do the same for impacts associate with the access route. I would not expect that in a well-coordinated document there would be any need for the various agencies to duplicate each other's analysis; thus, the Federal Aviation Administration would not be expected to analyze the fish and wildlife impacts of the dredge and fill proposal, even though they could conceivably be viewed as an indirect effect of an FAA determination regarding the proposal.

The question you raised about scope becomes considerably more significant if there is a decision to prepare an environmental assessment, as opposed to an environmental impact statement. I believe that given the range of federal agencies with some role in this proposal, a well organized and carefully coordinated EIS would cover the required range of impacts. The environmental assessment mechanism, however, does not provide for the lead agency/cooperating agency arrangement, nor for many of the other procedures which are part of the EIS process. Finally, let me remind you that the Council has generally advised agencies to keep the length of environmental assessments to not more than ten to fifteen pages, which does not contain long descriptions or detailed deta. A lengthy environmental assessment may be appropriate in a rare case where it is difficult to determine whether the proposal will cause significant environmental impact; in most caes, however, a lengthy environmental assessment indicates that an EIS is needed. See, Forty Most Asked Questions Concerning CEQ's National Enviornmental Policy Act Regulations, 46 FR 18016, Question 36a, 36b (1981) (enclosed). The Council has recently confirmed its view of the different levels of analysis called for in an environmental assessment and enviromental impact statement. See Preamble to Final Rule for 40 C.F.R. 1502.22, 51 FR 15618, 15625 (1986). (enclosed)

I hope these thoughts have been of some help to you. I realize that you face a difficult challenge and would be happy to be of further assistance to the National Capital Planning Commission, as you deeem appropriate.

Yours truly,

Dinah Bear

Dinah Bear
General Counsel

Encl.

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D.C. 20006

October 10, 1986

The Honorable Daniel P. Moynihan
SR-464 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Moynihan:

Enclosed is the memo which you requested at the hearing on the PortAmerica project regarding the National Environmental Policy Act and aesthetic impacts.

We will shortly be proceeding with our resposibilities to determine a lead agency for NEPA compliance for the PortAmerica project, per the request from the National Capital Planning Commission. Our first step in this process will be to hold a Council meeting to discuss the roles of the various agencies. This will be held in accordance with the Government in the Sunshine Act, and thus, will be open to the public. Our General Counsel will be in touch with Nan Stockholm when we set the date for the meeting, and I will keep you informed of the Council's decision in that regard.

Sincerely,

A. Alan Hill

A. Alan Hill
Chairman

Encl./db

THE NATIONAL ENVIRONMENTAL POLICY ACT AND AESTHETIC IMPACTS

The scope of the National Environmental Policy Act clearly contemplates consideration of aesthetic impacts within the framework of the environmental impact assessment process. Legislative history supports this fact, and the CEQ regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) clearly require consideration of aesthetic impacts. Additionally, judicial decisions have affirmed the necessity of considering aesthetic impacts when federal agencies meet their responsibilities under NEPA.

I. *The National Environmental Policy Act and Legislative History*: In Title I of NEPA, Congress states that,

> "(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may--
>
> (1) fulfill the responsibilities of each generation as trustee of the environment for suceeding generations;
> (2) assure for all Americans safe, healthful, productive, *and esthetically and culturally pleasing surroundings*;
> (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
> (4) *preserve important historic, cultural and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice*;
> (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
> (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources."
>
> 42 U.S.C. 4331 (emphasis added)

The statute also directs all agencies of the federal government to, "Utilize a systematic, interdisciplinary approach which wil insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment." 42 U.S.C. 4332(2)(A).

Title II of NEPA, which establishes the Council on Environmental Quality in the Executive Office of the President, specifies that each Member of the Council ". . . be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; . . . " 42 U.S.C. 4342.

In reflecting on the language in Title I of NEPA: "assure for all Americans safe, healthful, productive and esthetically and culturally pleasing surroundings," Id., the Senate Committee on Interior and Insular Affairs commented that,

> "The Federal Government, in its planning and programs, shall strive to protect and improve the quality of each citizen's surroundings both in regard to the preservation of the natural environment as well as in the planning, design, and construction of manmade structures." Senate Report on S 1075, No. 91-296, July 9, 1969, p. 18.

In commenting on the language, "preserve important historic, cultural, and natural aspects of our natural heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;" the same Committee stated that,

> "This subsection also emphasizes that an important aspect of national environmental policy is the maintenance of physical surroundings which provide present and future generations of American people with the widest possible opportunities for diversity and variety of experience and choice in cultural pursuits, in recreational endeavors, in esthetics and in living styles." Senate Report on S 1075, Id., p. 18. (emphasis added).

Further, in its introduction to the report on S. 1075, the Committee cited "poor architectural design and ugliness in public and private structures; . . . " as part of the evidence that the then existing laws and policies were not sufficient to "deal with the growing environmental problems and crises the Nation faces." Senate Report on S.1075, Id., p. 1.

II. CEQ Regulations Implementing the Procedural Provisions of NEPA.

An agency preparing an environmental impact statement (EIS) must, under the CEQ regulations, evaluate the direct, indirect and cumulative effects of the proposed action and alternatives to the proposed action. 40 C.F.R. 1502.16; 40 C.F.R. 1508.8. In the definition of the term "effects", the CEQ regulations state that:

> "Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems); aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also incude those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial." 40 C.F.R. 1508.8(b) (emphasis added).

Further, in the preparation of an EIS, federal agencies must evaluate the, "Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures." 40 C.F.R. 1501.16(g).

An evaluation of effects, although considerably briefer and with less rigorous public participation, is also required to be included in an environmental assessment. 40 C.F.R. 1508.9.

III. Judicial Decisions Dealing with Aesthetic Impacts.

All federal courts which have dealt with the issue recognize that aesthetic impacts are appropriately and necessarily considered under NEPA. Courts have also recognized that aesthetic harm is sufficient to confer standing under NEPA. One Circuit recently held that aesthetic impacts standing alone rarely trigger the requirement to prepare an EIS; however, no court has found that aesthetic impacts are outside the scope of the NEPA, or that aesthetic impacts alone never trigger the requirement to prepare an EIS.

The decision in City of New Haven v. Chandler, 446 F. Sup. 925 (D. Conn. 1978), includes a useful exposition on the subject of aesthetic impacts under NEPA. In that case, the city of New Haven sought to enjoin the construction of three elecrical transmission towers being built in the city harbor under a permit issued by the Army Corps of Engineers. The city's primary concern was the aesthetic impacts of the towers. The court said that:

> "Aesthetics is clearly a factor that must be considered by the Corps in determining whether the environmental impact of a project is significant. The NEPA was meant 'to assure for all Americans safe, healtful, productive, and aesthetically and culturally pleasing surroundings. 42 U.S.C. 4331(b)(2)(emphasis added). Aesthetic damage to the environment has played a major role in the decisions of the Second Circuit. See, e.g., Steubing v. Brinegar, [511 F.2d 489] at 496; Scenic Hudson Preservation Conference v. FPC, 453 F.2d 463 (2d Cir. 1971), cert denied, 407 U.S. 926, 92 S.Ct. 2453, 32 L.Ed.2d 813 (1972) (Scenic Hudson II); Scenic Hudson Preservation Conference v. FPC, 354 F.2d 608 (2d Cir. 1965), cert. denied sub nom. Consolidated Edison Co. of New York v. Scenic Hudson Preservation Conference, 384 U.S. 941, 86 S.Ct. 1462, 16 L.Ed.2d 540 (1966)(Scenic Hudson I.) Cases in which such considerations have received less emphasis are generally those in which the negative impact was clearly minimal. Compare Hanly v. Mitchell, 460 F. 2d 640, 646 (2d Cir.), cert denied sub nom. Hanley v. Kleindienst, 409 U.S. 990, 93 S.Ct. 313, 34 L.Ed. 2d 156 (1972) (Hanly I), and Maryland-National Capitol Park and Planning Comm'n v. U.S. Postal Service, 159 U.S. App.D.C. 158, 487 F. 2d 1029, 1028-39 (1973). Aesthetic effects, however, are difficult to measure, in contrast to such problems as noise or the pollution of air or water. . . . But the elusive character of aesthetics does not mean that such concerns are less weighty. Rather, the impossibiity of quantiifcation means, at most, that a finding as to the role of aesthetics need not be supported by statistical evidence. [cites omitted]. Id. at 930.

In this case, the court found that the Corps had properly conducted a sufficient, good faith investigation into the aesthetic impacts of the towers, based upon reasonable evidence.

Most other decisions dealing with aesthetic impacts do not offer a discussion of the topic, but rather, acknowledge that aesthetic impacts are a required to be considered under NEPA, and then apply that rule to the facts of a particular case. For example, in *Scenic Rivers Association of Oklahoma v. Lynn*, 382 F. Supp. 69 (E.D. Okl. 1974), the court stated as a conclusion of law that the types of impacts cognizable under NEPA:

> ". . . include, but are not limited to, effects upon the depth or course of stream, plant life, wildlife habitats, fish and wildlife, soil, the air, the quality of water, ~~social a~~nd economic impacts and effects upon *esthetics* and recreational opportunities." *Id.* at 76 (emphasis added).

In that case, esthetic impacts were one of the several effects found by the court to require the preparation of an EIS by the Department of Housing and Urban Development prior to its approval and registration of certain interstate land sales.

Aesthetic impacts have been identified as "traditional environmental impacts" as distinguished from social and economic impacts. *Citizens Comm. Against Interstate Rt. 675 v. Lewis*, 542 F. Supp. 496 (S.D. Ohio, W.D. 1982) ("none of the other three Plaintiffs. . . claim any injury from any traditional environmental impacts - air, water, recreation, noise, aesthetics", but rather allege socio-economic impacts.) *Id.* at 524. This distinction is significant because the trigger for an EIS is "the natural and physical environment and the relationship of people with that environment"; social and economic effects are not intended by themselves to require preparation of an EIS. 40 C.F.R. 1508.14.

In *DiVosta Rentals, Inc. v. Lee*, 488 F.2d 674 (5th Cir. 1973), the Court of Appeals upheld the Secretary of the Army's denial of an application for a dredge and fill permit for construction of an apartment complex. One of the major impacts considered in the decision was the potential effect on the aesthetic qualities of the area in which the apartments would be built. *Id.* at 680.

Similarly, in Citizen Advocates for Responsible Expansion v. Dole, 770 F. 423 (5th Cir. 1985), visual and aesthetic impacts were an important consideration in the Court of Appeal's decision to enjoin a proposed expansion of a segment of an interestate highway in Fort Worth, Texas until the Federal Highway Administration (FHWA) prepared an EIS. The court dismissed what it termed a "boilerplate statement" on aesthetic impacts and found that the FHWA had, "never considered any of the consequences - noise, visual, aesthetic, traffic or otherwise -- the project would have on any of the historic buildings." Id. at 436. The court cited evidence that the project's visual and aesthetic impacts would be "uninviting and inhumane" and detract from the "carefully conceived design" of the area. Id. at 435-36.

Aesthetic impacts were also a factor in the Second Circuit Court of Appeal's decision to enjoin construction of a federally funded expressway bridge over Lake Chautauqua in Western New York, pending the preparation of an EIS. In Steubing v. Brinegar, 511 F.2d 489 (2nd Cir. 1975), the court cited evidence that the bridge would adversely affect the "ecology of the lake and adversely affect the recreational esthetic, and economic resources of the immediate and surounding area." Id. at 496.

In cases where courts declined to order a federal agency to prepare an EIS or found that an EIS which had been prepared was adequate, the agency's adequate examination of aesthetics is often noted. See, for example, Isle of Hope, Etc. v. U.S. Army Corps of Engineers, 646 F. 2d 215 (5th Cir. 1981) ("Noise levels, navigational hazards, visual impact, water quality, and numerous other considerations which are within the proper purview of the Corps were considered.") Id. at 221; Falls Road Impact Committee Inc. v. Dole, 581 F. Supp. 678 (E.D. Wis. 1984) ("On the issue of adverse impact on aesthetic value in the area, it is clear from the record that FHWA considered this matter."

Id. at 696; Woida v. United States, 446 F. Supp. 1377 (D. Minn. 1978) ("The consultants then evaluated the potential routes for suitability in terms of visual and aesthetic impact.") Id. at 1386.

Aesthetic impacts are important enough under NEPA to confer standing on plaintiffs in court. For example, in Lake Erie Alliance v. United States Army Corps, 486 F. Supp. 707 (W.D. Penn. 1980), the court stated that, "Personally felt aesthetic or conservational harm is sufficient to confer standing, Sierra Club v. Morton, 405 U.S. 727, 734, 92 S.Ct. 1361, 1365, 31 L.Ed.2d 636 (1972), United States v. SCRAP, 412 U.S. 669, 687, 93 S.Ct. 2405, 2415, 37 L.Ed.2d 154 (1973). . . " Id. at 710. See also, Concerned Residents of Buck Hill Falls v. Grant, 388 F. Supp. 394 (M.D. Penn. 1975) ("The Plaintiffs stand to lose a substantial monetary and esthetic investment . . .") Id. at 398.

Some courts have been troubled by the difficulty in quantifying aesthetic impacts. For example, in Maryland-National Capitol Park & Planning Commission v. U.S. Postal Service, 487 F.2d 1029 (D.C. Cir. 1973), the Maryland-National Capital Park and Planning Commission asked the court to enjoin construction of the Washington Bulk Mail Center, which was to be located on a sixty-three acre tract in Prince George's County, Maryland. The site already contained significant industrial development (a large bottling plant, a shopping center, and a PEPCO power line were in the vicinity). One of the plaintiff's concern was "'visual and aesthetic detriment' connected with the placement near the Beltway of exterior parking and loading facilities." Id. at 1033. In its examination of this aspect of the complaint, the Court of Appeals stated:

> "First, we deal with esthetic questions. Primarily, this has to do with the visual effect of the Faciity on the users of the Beltway. In particular, concern was voiced by the NCPC during its successive stages of review of the project that there be

> landscaping of the loading and docking areas. . . . .
>
> "NEPA contemplates that esthetic considerations are part of the quality of the human environment . . . . [citations from statute and Senate Report omitted] And esthetics have played a part in court protection of environmental values even prior to NEPA, as appears from Scenic Hudson Preservation Conf. v. FPC, 354 F.2d 698 (2d Cir. 1965) and the court's advertence to the affected Hudson River scenery as 'finer than the Rhine.'
>
> "That some, or perhaps all, environmental impacts have an aesthetic facet, does not mean that all adverse esthetic impacts affect environment. That is neither good logic nor good law. Some questions of esthetics do not seem to lend themselves to the detailed analysis required under NEPA for a Section 102(C) impact statement. Like psychological factors, they 'are not readily translatable into conrete measuring rods.' Hanly v. Kleindienst, 472 F. 2d 823, 833 n. 10. The difficulty in precisely defining what is beautiful cannot stand in the way of expressions of community choice through zoning regulations. Berman v. Parker, 348 U.S. 26, 75 S.Ct. 98, 99 L.Ed. 27 (1954). But the difficulties have a bearing on the intention of Congress, and whether it contemplated, for example, a requirement of a detailed 'environmental impact statement,' and concomitant investigation, because of the possibility that each new Federal construction would be ugly to some, or even most, beholders, on such issues as: Is this proposed building beautiful? Or, what is the esthetic effect of placing the 'controversial' Picasso statute in front of the Civic Center building in Chicago? These types of problems lead us to conclude that a 'substantial inquiry' or 'hard look' was not contemplated, as a matter of reasonable construction of NEPA, where the claim of NEPA application is focused on alleged esthetic impact and the matters at hand pertain essentially to issues of individual and potentially diverse tastes." Id. at 1038-39.

But, in a footnote to this discussion, the court stated that:

> "The concern in this case should be distinguished from aesthetic questions pertaining to use of recreation areas [cites omitted] and from the interference with an unencumbered view of an attractive scenic expanse [cites omitted]. Id. at 1038, n. 5.

In the case cited in regards to unencumbered views, Goose Hollow Foothills League v. Romney, 334 F. Supp. 877 (D. Org. 1971), the court enjoined the Department of Housing and Urban Development from disbursing federal monies for construction of a high rise apartment building until an EIS had been prepared. The defendants claimed that the project would benefit, rather than degrade, the surrounding environment. However, the

the court noted that:

> "*Because the area presently has no high-rise buildings, the new building will undoutedly change the character of the neighborhood*". . . . The defendants gave virtually no weight to these factors, or to the incidental increase in automobile traffic. Neither did the defendants indicate that any weight was given to *the loss of the existing view* from certain neighboring properties. I believe the defendants have ignored cumulative effects on the quality of the human environment which are by no means insignificant." *Id.* at 879-80. (emphasis added)

Again, this case is contrasted by the court in *Maryland-National Capital Planning Commission v. U.S. Postal Service,* with the situation in that case in which "the view is not an attraction; people are not likely to drive on the high speed Beltway to look at an industrial park." 487 F.2d at 1038.

Two recent cases from the Seventh Circuit Court of Appeals also reflect the concern with the difficulty of evaluating aesthetic impacts. In *River Road Alliance v. Corps of Engineers of U.S. Army*, 764 F.2d 445 (7th Cir. 1985), *cert. denied*, ___U.S.___, 106 S.Ct. 1283, 89 L.Ed.2d 590 (1986). The majority, over a strong dissent, upheld the Corps of Engineers' finding of no significant impact for a permit to operate a temporary barge fleeting facility on the Mississippi River. In so deciding, the court stated that:

> "Aesthetic objections alone will rarely compel the preparation of an environmental impact statement. Aesthetic values do not lend themselves to measurement or elaborate analysis. See *Maryland-National Capital Park & Planning Comm'n. v. U.S. Postal Service* [cite omitted]. The necessary judgments are inherently subjective . . . " *Id.* at 451.

This language was cited in *Olmsted Citizens for a Better Community v. U.S.*, 793 F.2d 201 (8th Cir. 1986), in its decision that the Bureau of Prisons was not required to prepare an EIS on its proposed conversion of a former state mental hospital campus into a federal prisons hospital. *Id.* at 206.

In sum, all courts considering the issue have found that aesthetic impacts are clearly within the scope of NEPA. Most courts view aesthetic impacts to be among the traditional "environmental effects" which can, in appropriate circumstances, trigger preparation of an EIS. Some courts have expressed concern about the ability to objectively quantify aesthetic impacts. The statute clearly mandates consideration of aesthetic impacts in the framework of environmental impact assessment, and the majority view would appear to be that expressed in the City of New Haven v. Chandler:

> "Aesthetics is clearly a factor that must be considered . . . in determining whether the environmental impact of a project is significant. . . . the elusive character of aesthetics does not mean that concerns are less weighty. Rather, the impossibility of quanitifcation means, at most, that a finding as to the role of aesthetics need not be supported by statistcal evidence." 446 F. Supp. at 930.

STATEMENT OF SUSAN E. REECE, DEPUTY ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS BEFORE THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS, AT THEIR OVERSIGHT HEARING ON FEDERAL ENVIRONMENTAL ASSESSMENT PROCEDURES AS THEY AFFECT THE PORTAMERICA PROJECT.

****

MR. CHAIRMAN, IT IS A PLEASURE TO BE HERE TODAY TO DISCUSS THE PORTAMERICA PROJECT WITH YOU.

THE DEPARTMENT OF THE INTERIOR HAS BEEN VERY INTERESTED IN THIS PROJECT SINCE ITS INCEPTION IN 1981, AND HAS PARTICIPATED NUMEROUS TIMES IN THE HEARING PROCESSES HELD AT THE FEDERAL AND LOCAL LEVEL OVER THE PAST 5 YEARS.

THIS MAGNIFICENT SITE IS THE MAJOR GATEWAY TO THE STATE OF MARYLAND WHEN APPROACHING FROM THE SOUTH, AND IS A NEIGHBOR TO SEVERAL NATIONAL PARK SERVICE MANAGED AREAS, INCLUDING FORT FOOTE, THE OXON HILL CHILDREN'S FARM, AND THE MOUNT VERNON MEMORIAL HIGHWAY.

IT WAS ONLY AFTER BEING ASSURED THAT THE DEVELOPER, MR. JAMES T. LEWIS, WAS COMMITTED TO DEVELOPMENT WHICH WOULD COMPLEMENT THE FEDERAL INTERESTS OF SUITABLE BUILDING HEIGHTS AND DENSITY IN THE AREA, THAT WE AGREED NOT TO OBJECT TO THE TRANSFER, UNDER SPECIFIC CONDITIONS, OF 55 ACRES OF NATIONAL PARK SERVICE LANDS TO THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION IN ORDER TO PROVIDE THE CRITICALLY NEEDED ACCESS TO THE WATERFRONT PORTION OF THE PORTAMERICA PROJECT.

IN GOOD FAITH, THE NATIONAL PARK SERVICE AND THE NATIONAL CAPITAL PLANNING COMMISSION SPENT MANY MONTHS WORKING WITH MR. LEWIS TO INCORPORATE MUTUALLY AGREED-UPON CONDITIONS WHICH WOULD ALLOW FOR THE FEDERAL INTERESTS TO BE

PROTECTED, WHILE ASSURING THAT THE ECONOMIC VIABILITY OF THE PROJECT WAS MAINTAINED. WE FEEL THAT, FROM THIS EFFORT, A GOOD BALANCE OF INTERESTS WAS ACHIEVED THROUGH THE 1985 MEMORANDUM OF UNDERSTANDING WITH THE NATIONAL CAPITAL PLANNING COMMISSION.

THE NATIONAL PARK SERVICE WAS A PARTY OF RECORD AT THE MAY 1, 1986, HEARINGS HELD BEFORE THE PRINCE GEORGE'S COUNTY PLANNING BOARD CONCERNING PORTAMERICA, AND WE ARE ENCLOSING FOR YOUR INFORMATION A COPY OF THE TESTIMONY WE GAVE AT THAT TIME. WE EMPHASIZE THAT THESE COMMENTS STILL REPRESENT THE POSITION OF THE NATIONAL PARK SERVICE, AND THE DEPARTMENT OF THE INTERIOR. AS STATED IN THESE COMMENTS, WE FEEL THE PROJECT PROPOSED FOR THE WATERFRONT PARCEL IS ACCEPTABLE. FURTHER, WE HAVE NO OBJECTION TO APPROPRIATE COMMERCIAL DEVELOPMENT OF THE BELTWAY PARCEL.

HOWEVER, WE ARE VERY CONCERNED ABOUT ANY HIGH-RISE SKYSCRAPER, SUCH AS THAT PROPOSED ON THE BELTWAY TRACT, WHICH WOULD IMPACT VISUALLY ON THE FEDERAL INTERESTS, AS DEFINED IN THE MEMORANDUM OF UNDERSTANDING. FOR THAT REASON, WE ARE OPPOSED TO THE 42-STORY OFFICE BUILDING NOW BEING PROPOSED IMMEDIATELY ABOVE THE WATERFRONT DEVELOPMENT. WE FIRMLY BELIEVE THAT THIS BUILDING WILL HAVE A PERMANENT, IRREVOCABLE, AND EXTREMELY NEGATIVE IMPACT ON THE FEDERAL INTERESTS OF OUR NATION'S CAPITAL AND THE AREA OF THE RIVER BELOW THE CITY.

THE TOWER IS TOTALLY OUT OF SCALE WITH ITS SURROUNDING ENVIRONMENT AND IS NOT A UNIFYING ELEMENT FOR THE REST OF THE OTHERWISE APPROPRIATE ARCHITECTURAL STYLE PROPOSED FOR THE WATERFRONT TRACT. THE REMAINDER OF THE DEVELOPMENT HAS BEEN DESIGNED TO TAKE ADVANTAGE OF THE LOCATION AND NATURAL FEATURES EXISTING

AT THE SITE IN A HARMONIOUS WAY, BUT THIS TOWERING STRUCTURE STANDS IN ISOLATION AND STARK CONTRAST TO ITS SURROUNDINGS, TOTALLY OVERPOWERING THEM IN HEIGHT AND SCALE.

IN THAT THE DEVELOPER ADDED THIS TOWER TO HIS PLANS AND VIOLATED THE SPIRIT AND INTENT OF THE MEMORANDUM OF UNDERSTANDING AND THE LEGISLATION, WE HAVE INDCATED A RELUCTANCE TO GRANT ACCESS TO IT. IN RESPONSE TO THIS, THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION IS CHALLENGING, THROUGH LITIGATION, OUR INTERPRETATION OF THE ACT "TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO CONVEY CERTAIN LAND IN THE STATE OF MARYLAND TO THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION" (P.L. 99-215). AS YOU CAN WELL APPRECIATE, WE CANNOT COMMENT ON THE ISSUES WHICH ARE IN LITIGATION.

IN YOUR LETTER OF SEPTEMBER 19, 1986, YOU HAD SEVERAL QUESTIONS CONCERNING OUR INVOLVEMENT IN THE PORTAMERICA PROJECT. WE WILL ATTEMPT TO ANSWER YOUR QUESTIONS AS YOU LISTED THEM.

(1) THE STATUTORY RESPONSIBILITY OF THE DEPARTMENT OF THE INTERIOR, SPECIFICALLY WITH RESPECT TO THE PORTAMERICA PROJECT.

THE NATIONAL PARK SERVICE'S INVOLVEMENT IN THIS PROJECT IS LIMITED TO IMPLEMENTATION OF A PORTION OF THE REQUIREMENTS OF PUBLIC LAW 99-215, WHICH WAS PASSED BY CONGRESS AND SIGNED BY THE PRESIDENT ON DECEMBER 26, 1985. THAT PORTION WHICH IMPACTS THE NATIONAL PARK SERVICE IS THE SECTION AUTHORIZING AND DIRECTING THE SECRETARY OF THE INTERIOR TO TRANSFER APPROXIMATELY 55 ACRES OF FEDERAL PARKLAND TO THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION. WE DO NOT

BELIEVE THAT THE PROVISIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT APPLY TO THIS ACTION.

THE U.S. FISH AND WILDLIFE SERVICE HAS CONCERNS OVER THE IMPACT THAT FILLING OF WETLANDS SURROUNDING A PORTION OF SMOOT COVE WILL HAVE ON THE ENVIRONMENT. THIS CONCERN WOULD BE DEALT WITH IN THE CORPS OF ENGINEERS PERMITTING PROCESS.

(2) THE SPECIFIC DEPARTMENT OF INTERIOR APPROVAL/DISAPPROVAL PROCEDURES AFFECTING THE PROJECT.

ALTHOUGH WE HAVE NO LEGAL AUTHORITY TO APPROVE OR DISAPPROVE THE PORTAMERICA PROJECT AS A WHOLE, ONCE THE IMPACT TO WETLANDS HAS BEEN CLEARLY DETERMINED BY THE FISH AND WILDLIFE SERVICE, OUR COMMENTS IN THIS AREA COULD CERTAINLY IMPACT THE DESIGN OF THIS PROJECT.

(3) COORDINATION WITH OTHER FEDERAL AGENCIES.

WE HAVE, AT THE INVITATION OF THE NATIONAL CAPITAL PLANNING COMMISSION, ALREADY ATTENDED TWO SESSIONS HELD WITH ALL FEDERAL AGENCIES WHICH MAY BE IMPACTED BY THIS PROJECT TO DISCUSS OUR CONCERNS, AND HOW TO BEST ADDRESS THEM. GIVEN THE DEPARTMENT OF THE INTERIOR'S RELATIVELY LIMITED INTERESTS, WE DO NOT BELIEVE WE SHOULD BE DESIGNATED AS THE LEAD AGENCY.

(4) DEPARTMENT OF THE INTERIOR ACTIONS AND APPLICABLE PROCESS THUS FAR REGARDING PORTAMERICA

IN ADDITION TO OUR LONG-STANDING INVOLVEMENT DESCRIBED ABOVE, WE HAVE

ASSISTED IN CONDUCTING AN ANALYSIS THAT SHOWS THE SEVERE VISUAL IMPACTS THIS PROJECT WOULD HAVE ON FEDERAL LANDS UNDER THE JURISDICTION OF THE NATIONAL PARK SERVICE.

(5) OPPORTUNITY FOR PUBLIC PARTICIPATION AND REVIEW

IN THE CASE OF ENVIRONMENTAL IMPACTS TO WETLANDS, THE FISH AND WILDLIFE SERVICE WILL PARTICIPATE IN THE PUBLIC INVOLVEMENT PROCESS OF THE CORPS OF ENGINEERS.

(6) TIMETABLE FOR ADDITIONAL DEPARTMENT OF INTERIOR PROCEDURES AS THEY AFFECT THE PORTAMERICA PROJECT

WITH REGARD TO THE TRANSFER OF THE 55 ACRES, WE HAVE ALREADY TRANSMITTED THE DRAFT DEEDS TO THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION ON JULY 3, 1986. FURTHERMORE, WE ARE WAITING FOR THE DEVELOPER TO APPLY FOR THE PERMITS NECESSARY FOR FILLING OF SMOOT COVE; HENCE, OUR TIME OF RESPONSE IS AWAITING HIS FUTURE ACTIONS.

I BELIEVE THIS IS RESPONSIVE TO THE QUESTIONS YOU RAISED IN YOUR LETTER, AND WOULD BE PLEASED TO ANSWER ANY QUSTIONS THAT YOU MAY HAVE.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

L30(NCR-LUCE)

OCT 2 1986

Honorable Daniel P. Moynihan
464 Senate Russell Office Building
Washington, D.C. 20510-3202

Dear Senator Moynihan:

We want to thank you, Senator Chafee, and Senator Stafford for holding the hearing before the Committee on Environment and Public Works concerning the proposed PortAmerica tower, and we're pleased that you invited us to testify.

During the course of my testimony you asked for a status report on the transfer of the 55 acres of parkland to the Maryland-National Capital Park and Planning Commission pursuant to Public Law 99-215. This transfer has not been completed. We are enclosing a copy of our letter of July 3, 1986, to the Commission in which we transmitted draft deeds, as well as the subsequent correspondence directly related to this issue.

On September 11, 1986, the Maryland-National Capital Park and Planning Commission filed suit against the Department of the Interior in the United States District Court for Maryland, The Maryland-National Capital Park and Planning Commission v. Hodel, Civil Action No. B86-2806 (D.Md. filed September 11, 1986). In this suit, the Commission alleges that the restrictions proposed by the National Park Service violate the terms of the Act and requests the court to issue a writ of mandamus compelling the Department to transfer the park property.

The Department will be undertaking a complete policy review of our position on the land transfer issue. In the course of this review, it will, of course, be necessary to coordinate our position with the Department of Justice, which represents the United States in the lawsuit.

If we can be of further assistance, please feel free to contact me.

Sincerely,

Susan Recce

Susan Recce
Deputy Assistant Secretary for Fish
and Wildlife and Parks

Enclosure

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 27 1986

Mr. John W. Rhoads
Chairman, Prince George's County
Planning Board
The Maryland-National Capital Park and
Planning Commission
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772

Dear Mr. Rhoads:

This responds to your letter to Secretary Hodel dated July 28, 1986, and to Manus J. Fish, Jr., Regional Director, National Capital Region, National Park Service dated July 25, 1986, concerning the transfer of approximately 55 acres of park land in Prince George's County, Maryland, pursuant to the requirements of the Act of December 26, 1985, P.L. 99-215.

I have reviewed the correspondence between you and Regional Director Fish on this matter and I am in agreement with the position taken by the National Park Service. Central to the questions addressed in this correspondence is whether a vehicular access roadway may be built across the 55-acre tract of park land to serve the adjacent proposed PortAmerica tower development. I am convinced that under the provisions of P.L. 99-215, the PortAmerica development may not be served by a roadway traversing the 55 acres of park land until this portion of the PortAmerica development is included under the Memorandum of Understanding dated May 7, 1985, with the National Capital Planning Commission. In this regard, it is my intention that any deed of conveyance to you clearly impose this condition as a covenant running with the land.

I gather from your correspondence that you differ with this position. I understand your desire to support viable economic development in Prince George's County and I share this goal with you. In addition, I am committed to working with you to ensure that the land transfer is accomplished in such a fashion so as to permit the construction of the "S Curve" addition connecting I-295 and Route 210 as intended by the Maryland Department of Transportation. However, I am firm in my position that park land will not be used for access to any development project not included within the Memorandum of Understanding designed to protect the federal interests in this area.

Also, as you know, the Federal Aviation Administration (FAA) is studying the effect of the proposed PortAmerica tower to determine whether the proposed construction would constitute a hazard to air navigation. All Federal agencies have an obligation to ensure that their actions do not foster land uses incompatible with a FAA determination on air navigation hazards. Accordingly, our department will not be executing any deed to the 55-acre tract of park land until the FAA completes its determination and we review the impact of any proposed access on that determination.

Within the frameworks I have outlined above, I urge you to work directly with Manus J. Fish, Jr., Regional Director, National Capital Region, National Park Service to work out all of the details of the land transfer in order that we can be prepared to complete that transfer once the FAA determination is made.

Sincerely,

(Sgd) P. Daniel Smith

Acting Assistant Secretary for
Fish and Wildlife and Parks

cc: Glen T. Urquhart, Chairman
National Capital Planning Commission

Hal Kassoff, Administrator
State Highway Administration
Maryland Department of Transportation

James T. Lewis, President and Chairman
James T. Lewis Enterprises, Ltd.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland, 20870

Office of the Chairman

July 28, 1986

Honorable Donald P. Hodel
Secretary of the Interior
18th & C Streets, N. W.
Washington, D. C. 20240

Dear Secretary Hodel:

The enclosed is a follow-up to my July 16 letter to you concerning the transfer of federal parkland.

Thank you for your continued assistance.

Sincerely,

John W. Rhoads vp

John W. Rhoads
Chairman
Prince George's County
Planning Board

Enclosure

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THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772

July 25, 1986

BY MESSENGER

Mr. Manus J. Fish, Jr.
Regional Director
National Capital Region
National Park Service
1100 Ohio Drive, S.W.
Washington, D.C. 20242

Re: Land Conveyance Directed by P.L. 99-215

Dear Mr. Fish:

I have carefully read your letter of July 18, 1986, and am gratified that we appear to be close to agreement with respect to this matter.

I am in full accord with your expressed desire to implement promptly a land transfer in compliance with the dictates of P.L. 99-215. That transfer, as you suggest, ought not in any way interfere with the State of Maryland's completion of improvements to I-295. I am concerned, however, to see that you are interpreting P.L. 99-215 as evincing a Congressional intent that the I-295 improvements be delayed until a two-step, two-deed transfer between the Park Service and the Commission is effectuated. A logical solution to the dilemma your letter poses would be for the Commission to grant the State of Maryland whatever easement may be required (and may already have been agreed to by the Park Service) in fulfillment of your commitments for its road improvement project -- and to do so simultaneously with the prompt recording of a unitary land transfer deed. The Commission is willing to undertake such an obligation, in order that the I-295 improvements of such importance to the citizens of this region will proceed unhindered. And by so doing, all of us can be confident that the "right, title and interest" of the United States as it existed at the time of adoption of P.L. 99-215 will be conveyed to the Commission in a manner consistent with the law.

That said, the Commission is so committed to the timely completion of the I-295 improvements that it is willing, if you insist, to agree to a conveyance by two deeds. We request only the following minimal assurances in that regard. First, in order that there can be no doubt

Mr. Manus J. Fish, Jr.
July 25, 1986
Page 2

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as to compliance with P.L. 99-215, both deeds should be recorded simultaneously and contain only the exact restrictive language spelled out in the statute. Second, the Commission should be informed of and agree to the terms of the easement your proposed transfer deeds now expressly incorporate by reference -- obviously, we must know what you want us to agree to before we can agree. Subject to these minimal conditions, I am confident that we can work together with the Maryland State Highway Administration to resolve this matter by utilizing the "two deeds" approach you prefer. I welcome a meeting of all interested parties to that end.

Allow me also briefly to address the second sentence in the second paragraph of your July 18 letter. The Commission is prepared to agree to a land transfer consistent with the terms of P.L. 99-215 if the restrictive terms in the transfer documents restate verbatim the statutory language. Obviously, the Commission cannot be a party to a transfer that contains restrictions that vary even slightly from those expressly authorized by law. Should you unexpectedly have some difficulty agreeing to limit the restrictive language in the transfer document(s) to the language Congress precisely has spelled out in P.L. 99-215, please inform us promptly.

P.L. 99-215 became effective on December 26, 1985. Nearly seven (7) months later, the Commission still is awaiting the land transfer. Let us move forward, immediately, to satisfy that Congressional mandate.

Very truly yours,

John W. Rhoads

John W. Rhoads
Chairman
Prince Georges County
Planning Board

By: Thurman H. Rhodes

JWR:mgg

CC: Hal Kassoff, Administrator
State Highway Administration
Maryland Department of Transportation

James T. Lewis, President and Chairman
James T. Lewis Enterprises, Ltd.

United States Department of the Interior

NATIONAL PARK SERVICE
NATIONAL CAPITAL REGION
1100 OHIO DRIVE, S. W.
WASHINGTON, D.C. 20242

Mr. John W. Rhoads
Chairman, Prince George's County
Planning Board
The Maryland-National Capital Park and
Planning Commission
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772

18 JUL 1986

Dear Mr. Rhoads:

Thank you for your letter to me dated July 9, 1986, in response to my letter to you of July 3, 1986, concerning transfer of approximately fifty-five acres of park land in Prince George's County, Maryland, pursuant to requirements of the Act of December 26, 1985, P.L. 99-215.

If I understand your position correctly, you believe that the National Park Service must transfer the appropriate interests in land in one deed to the entire 55 acres rather than in the two-deed format we propose. Your letter did not object to those provisions within our draft deeds which incorporate the restrictions contained in subsection (b)(1) of P.L. 99-215 and I do not address those access restriction issues here.

While I understand your desire to simplify this process, I believe that were we to follow your suggestion, unintended and undesirable consequences would occur. Specifically, were we to adopt your proposal, it would be impossible to devote a portion of the 55-acre tract for construction of the "S curve" addition connecting I-295 and Rt. 210 as intended by the Maryland Department of Transportation. I know that this project is an important one to both the State of Maryland and to Prince George's County, and the National Park Service has devoted considerable effort to help effectuate this project in a timely manner. Also, construction of a portion of this project is now under way.

Were we to adopt your proposal as outlined in the July 9th letter, it would be necessary to abandon the I-295 "S curve" project. This result would be mandated by the requirements of subsection (a)(2) of the Act of December 26, 1985. Under that subsection, the 55 acres would revert to the United States if the land were used for other than park and outdoor recreation purposes or for the limited access purposes as outlined in subsection (b)(1) of the Act. Construction of a segment of the interstate highway system (I-295 "S curve") is neither a park or recreation purpose nor a portion of the limited access authorized under subsection (b)(1). Unless the National Park Service makes provision for the "S curve" construction prior to transferring the 55 acres to you, it would not be possible for the Maryland Department of Transportation to complete that project as intended.

We do not believe that it is necessary to abandon the I-295 improvement project to comply with the requirements of P.L. 99-215. Specifically, we do not believe that the "all right, title and interest . . ." language contained in subsection (a)(1) of the Act should be read in the narrow fashion suggested in your letter. Rather, we believe that the appropriate statutory construction requires the National Park Service to transfer all right, title, and interest consistent with all of the requirements of P.L. 99-215. This conclusion is particularly evident in subsection (a)(2) of the Act. Subsection (a)(2) provides for a reverter to the National Park Service if the 55 acres is used for other than park and outdoor recreation purposes or the access purposes as outlined in subsection (b)(1). The existence of this reverter provision is clearly contrary to the narrow interpretation outlined in your letter. Moreover, subsection (a)(2) makes clear that Congress intended that the land be transferred subject to terms and conditions. In this regard subsection (a)(2) provides in relevant part:

> . . . The instrument for conveyance for the real property conveyed pursuant to subsection (a) shall set forth all terms and conditions of the conveyance. . . .
> § (a)(2), Act of Dec. 26, 1986, P.L. 99-215.

Accordingly, we believe that under our reading of the statute, the National Park Service may transfer the 55 acres subject to a highway easement for the State of Maryland, and that this transfer may be accomplished in two deed instruments. We would, of course, be willing to reduce the transfer into a single deed. However, this would delay the transfer because the transfer of the highway easement must occur first for the reasons outlined above.

At this point, it appears that we have three possible alternatives. First, we could proceed to process the two deeds as proposed in my letter of July 3, 1986. This is my preferred alternative, as I believe this would allow us to proceed with the much needed I-295 improvements now under way, would fulfill all the requirements of P.L. 99-215, and would permit us to accomplish these goals quickly. Second, we could transfer -- in a single deed -- the 55-acre parcel to you subject to a highway easement granted the Maryland Department of Transportation. The disadvantage of this approach is delay in your obtaining the land. Such delay would be caused by the need for the National Park Service to complete negotiation and transfer of the highway easement prior to transferring the underlying fee. Third, we could proceed, as you propose, by transferring the 55 acres subject to the terms and conditions contained in our draft deeds in a single deed instrument. This, of course, would halt, and cause abandonment of, the I-295 improvement project now under way. Before I could proceed with this alternative, our long standing commitment to the Maryland Department of Transportation would have to be addressed. As you know, our plans for this project are in the final stages of implementation.

Again, my preference is to proceed with execution of the deeds as enclosed with my letter of July 3, 1986. I am prepared to begin processing those deeds immediately upon receipt of written notice from you that those deeds are acceptable. If you wish to adopt either of the other alternatives, please advise me. Also, if you have other alternatives you wish us to consider, or if you would like to meet and discuss these issues, I am willing to meet and work with you to bring this important project to a successful conclusion. If you wish to arrange a meeting, please feel free to call me on 426-6612.

Thank you for your time and attention to this matter.

Sincerely,

Jack Fish

Regional Director
National Capital Region

cc: Glen T. Urquhart, Chairman
National Capital Planning Commission

Hal Kassoff, Administrator
State Highway Administration
Maryland Department of Transportation

James T. Lewis, President and Chairman
James T. Lewis Enterprises, Ltd.

RD LOG NO. ADSE Log No.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Prince George's County
Planning Board

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772

July 9, 1986

7/15

HAND CARRY

7/16 Copy - 2 Parsons
2 Robbins

CERTIFIED MAIL

Mr. Manus J. Fish
Regional Director
National Capital Region
National Park Service
1100 Ohio Drive, S. W.
Washington, D. C. 20242

RE: P.L. 99-215. Deed to Property Directed to be Transferred
Your Letter of July 3, 1986 with Attachments

Dear Mr. Fish:

Your letter under reference with copies of the two quit claim deeds was hand delivered to me on July 3, 1986. Upon review, I am of the view that the deeds you propose to execute do not comply with the requirements of Public Law 99-215.

The Public Law authorizes and directs the conveyance of all right, title and interest of the United States to a parcel of land comprising approximately fifty-five acres located in Prince George's County, Maryland. There is no mention of conveyance by one or more deeds.

In your letter of July 3, 1986, you have stated that it is your intention to execute the first deed as soon as possible and execute the second deed as soon as the land exchange has been completed. Further, you state that the second deed would transfer title to the 11.817 acre tract, subject to a perpetual easement which the National Park Service has agreed to transfer to the State of Maryland as part of a major land exchange, prior to the enactment of P.L. 99-215.

I have read the Public Law carefully, and I do not see anywhere a mention of withholding the conveyance of the entire 55± acres of land or a portion of it until the happening of any or all of the events you have mentioned. Moreover, I am of the view that grant of the perpetual easement to the State of Maryland after the enactment of P.L. 99-215 and prior to the execution and recordation of the deed to the 11.817 acre tract would not convey "all right, title and interest of the United States" to the land in favor of The Maryland-National Capital Park and Planning Commission as directed by P.L. 99-215. In other words, after P.L. 99-215 was enacted, there could be no dilution of the right, title and interest of the United States prior to conveyance of the property.

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I am, therefore, requesting that a single deed be prepared for the entire 55± acres of land which would convey to The Maryland-National Capital Park and Planning Commission all right, title and interest of the United States, as directed by P.L. 99-215.

I am further requesting that the new deed for the entire 55± acres of land be prepared and executed within a period of ten (10) days to fully comply with the letter and spirit of P.L. 99-215. I wish to mention in passing that P.L. 99-215 became effective on December 26, 1986, and I need no further emphasize the urgency.

Sincerely,

John W. Rhoads
Chairman, Prince George's
County Planning Board

United States Department of the Interior

NATIONAL PARK SERVICE
NATIONAL CAPITAL REGION
1100 OHIO DRIVE, S. W.
WASHINGTON, D.C. 20242

3 JUL 1986

Mr. John W. Rhoads
Chairman
The Maryland-National Capital
  Park and Planning Commission
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772

Dear Mr. Rhoads:

Enclosed are copies of quitclaim deeds that we intend to execute and file in the land records of Prince George's County, Maryland. These deeds will comply with the requirements for conveyance of National Park Service land to the Maryland-National Capital Park and Planning Commission, as contained in Public Law 99-215 (99 Stat. 1724), entitled "An Act to Authorize the Secretary of the Interior to Convey Certain Land Located in the State of Maryland to the Maryland-National Capital Park and Planning Commission."

The Act authorizes the Secretary of the Interior to convey all right, title, and interest of the United States to a parcel of approximately 55 acres of land. The Act provides that title to the parcel shall revert to the United States if the land is used for a purpose other than park and outdoor recreation purposes, except that certain access across the parcel is authorized by subsection (b)(1).

The authority in subsection (b)(1) for the Maryland-National Capital Park and Planning Commission to convey access across the parcel is limited. While access can be granted to the owner of any adjacent real property, five contingencies must be met. The only owner of adjacent real property which can currently meet these five contingencies is the owner of that property immediately adjacent to Smoot Bay, known as the "waterfront tract", which is the subject of the memorandum of May 7, 1985. Also, even though that owner may hold other adjacent property, such as the "beltway tract", that access must be limited to serve only the specific tract covered by the memorandum of May 7, 1985.

If that owner wishes to expand the access to serve or connect with tracts other than the waterfront tract lying adjacent to Smoot Bay, it will be necessary to amend the memorandum to include such other tracts.

The enclosed quitclaim deeds incorporate the reversions and limitations contained in Public Law 99-215. The first deed transfers fee title to the 45.44 acre tract. The second deed transfers title to the 11.817 acre tract, subject to a perpetual easement which the National Park Service had agreed to transfer to the State of Maryland as a part of a major land exchange prior to enactment of Public Law 99-215. The perpetual easement, will of course, contain the same access limitations included in the enclosed deeds. Our intention is to execute the first deed as soon as possible, and to execute the second deed as soon as the land exchange has been completed.

Please let us know within the next two weeks if you have any comments on the draft deeds.

Sincerely,

Manus J Fish Jr

Regional Director
National Capital Region

Enclosures

cc: Glen T. Urquhart, Chairman
National Capital Planning Commission

Hal Kassoff, Administrator
Maryland State Highway Administration

James T. Lewis, President and Chairman
James T. Lewis Enterprises, Ltd.

The Conservation Foundation

Testimony of Christopher J. Duerksen
Senior Associate, The Conservation Foundation
before the
Senate Committee on Environment and Public Works
October 1, 1986

Good morning. My name is Christopher J. Duerksen. I am a lawyer and senior associate at The Conservation Foundation where I specialize in land-use and development law. I am the immediate past chair of the American Bar Association's Committee on Land Use, Planning, and Zoning and currently serve as an elected member of the Fredericksburg, Virginia, city council. I am here today speaking on behalf of The Conservation Foundation.

We very much appreciate the opportunity to testify at this hearing on the important issue of federal assessment of projects that have an impact on the natural and man-made environment in the Capital area. My analysis is not directed at the PortAmerica proposal per se, but the broader legal question of what power Congress has to regulate private development that has an adverse visual and aesthetic impact on the Capital and its environs.

The Conservation Foundation is a non-profit policy research and education institution based in Washington, D.C. Since its founding in 1948, the Foundation has been dedicated to improving

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Washington, DC 20037
202/293-4800 Telex 64505 PANDA

Affiliated with World Wildlife Fund

the quality of the environment and to promoting wise use of the earth's resources, both natural and man-made. The Foundation has worked extensively in the fields of urban conservation and public land protection. We have published a number of books on these subjects, including a Handbook on Historic Preservation Law and a study of the National Park System entitled National Parks for A New Generation which I co-authored.

I am currently working on a book entitled Successful Communities: How They Are Making America More Livable. In this work I have found a growing concern not only with the ecological and economic impacts of development, but also with design and aesthetics. States and local governments are coming to recognize that they must go beyond ecology and economics in land planning to ensure quality development and maintain the special character of their communities. That special character is essential to maintaining a good quality of life and, increasingly, to maintaining a strong economic base, because growing sectors of the economy place great emphasis on these factors in chosing locations for building new facilities or expanding existing ones.

I have found this concern in communities across the nation, and it reflects exactly the sentiments I see embodied in the Senate's concern over the impacts of the PortAmerica project. In Austin, Texas, for example, the city council recently passed strong new controls on high-rise development throughout the community to protect the view of the state capitol from important vantage points such as public parks. (The Texas state capitol building, dear to the heart of all Texans, is a replica of the nation's Capitol, only one foot taller.) Similarly, in Denver the city has imposed height controls on buildings around the state capitol and on any structures that would block the view of the Rocky Mountains from certain city parks. This ordinance was recently upheld by a local court despite a serious economic impact on one landowner.

Design review and height restrictions are no longer limited just to protecting significant monuments or historic areas either. In San Francisco and Seattle a revolt against overpowering, boxy-style high-rises has led to the imposition of strong height limits and design controls. Even suburban communities are getting into the game, imposing controls on new construction such as office parks and shopping centers. The courts have been very supportive of such efforts. See Novi v. City of Pacifica, 215 Cal. Rptr 439 (1985), and Village of Hudson v. Albrecht, 458 N.E.2d 852 (Ohio 1984).

Indeed, the United States Supreme Court has made clear in a number of contexts that land-use regulations based solely on aesthetic considerations are entirely proper under the U.S. Constitution. In fact, the issue is settled to such an extent that in the landmark case involving preservation of Grand Central Terminal, the Court observed:

> ...we emphasize what is not in dispute. Because this Court has recognized in a number of settings, that states and cities may enact land-use restrictions or controls to enhance the quality of life by preserving the character and desirable aesthetic features of a city, appellants do not contest that New York City's objective of preserving structures and areas with special historical, architectural, cultural significance is an entirely permissible governmental goal. Penn Central Trans. Co. v. New York City, 438 U.S. 104, 129 (1978).

Thus it is quite clear as a general proposition that nothing in the U.S. Constitution prohibits governments from imposing strict regulations on private developments based solely on aesthetic grounds. For the purposes of this hearing then, the key legal questions are what power does Congress have to regulate directly private development outside the District of Columbia that affects nearby federal property or the Capital area, and by what methods can Congress exercise such power if it does exist?

CONGRESS' POWER TO REGULATE

My research on this issue reveals that Congress clearly has the power to regulate private development outside Washington, D.C., that may have an adverse aesthetic impact on the Capital area or on nearby federal property. Such power emanates from several sources, two of which I will discuss here: the Property Clause and the Commerce Clause of the United States Constitution.

The Property Clause: An important source of authority to manage and protect federal land is the Property Clause, Article IV, Section 3, Clause 2 of the Constitution: "The Congress shall have the power to make all needful rules and regulations respecting the Territory or other property belonging to the United States."

Courts have intepreted the authority granted to Congress under the Property Clause to be very similar to the police power exercised by local governments when they enact land-use regulations. Camfield v. United States, 167 U.S. 518 (1897). This power may be exercised over federal lands even if a state has not consented to its exercise. Moreover, several decisions make clear that Congress can control actions on private property outside federal boundaries to protect federal lands. Camfield, Id. (Held: Congress can prohibit enclosures of federal property by erection of fences on adjacent private land); United States v. Alford, 274 U.S. 264 (1927) (Held: Congress has authority to prohibit activity on privately owned land that imperils federal property.)

Several recent decision have expanded on Congress' Property Clause powers in several important aspects:

(1) Actual physical damage to federal property is not required before Property Clause regulations can be invoked. United States v. Brown, 552 F.2d 817 (8th Cir. 1977) (Held: Federal regulation of hunting on state waters within National Park preempts state authority); State of Minnesota v. Block, 600 F.2d 1240 (8th Cir. 1981), cert. denied, 456 U.S. 944 (1982) (Held: Federal restrictions on motorized travel on non-federal lands and waters within federal wilderness area valid.)

(2) The Property Clause grants Congress the power not only to protect federal property but also to protect and promote the purposes for which the lands in question were designated or set aside. U.S. v. Brown, Id.; State of Minnesota v. Block, Id.; Kleppe v. New Mexico, 426 U.S. 529 (1976) (Held: Federal statute protecting wild burros on federal lands supersedes state estray law to the contrary.)

Thus Congress has broad authority under the Property Clause to regulate private lands if (1) the statutory restrictions will protect federal lands or are enacted to protect and promote the fundamental purposes for which the land was reserved or designated (e.g., a scenic roadway, a national historic monument, and so forth); and (2) the regulations are reasonably related to that purpose.

The Commerce Clause: The Commerce Clause gives to Congress the power "to regulate commerce with foreign nations, and among the several states, and with the Indian Tribes." U.S. Constitution, Art. I, Sec. 8, Clause 3. In case after case, the Supreme Court has held that Congress may exercise sweeping authority under the Commerce Clause. Indeed, only once in the last 50 years has the Court invalidated a law enacted pursuant to the Commerce Clause. As one commentator has observed:

> Congress' power to regulate commerce has been upheld even when the activity in question is intrastate in nature or has only a trivial impact on interstate commerce... Moreover, Commerce power legislation will be upheld if there is any arguable connection between the regulation and commerce that touches more states than one. The nexus between the legislation and commerce may be based upon theoretical economic relationships: legislative judgement concerning the economic effects of certain activities or the directness of their relationship will be given judicial deference. Furthermore, federal legislation under the Commerce Clause will be upheld even if it invades the traditional subject matter of local police power legislation ...Congress may also exercise its commerce power for purposes unrelated to commerce, per se. Federal laws relating to the environment, for example, have been routinely upheld by reviewing courts under the Commerce Clause. Blake Shepard, "The Scope of Congress' Constitutional Power Under the Property Clause: Regulating Non-Federal Property to Further the Purposes of National Parks and Wilderness Areas," Environmental Affairs Law Review, Vol. 11:479, 523-4.

EXAMPLES OF CONGRESS' EXERCISE OF REGULATORY POWERS

Relying on authority granted by the Property and Commerce Clauses, Congress and federal agencies have not hesitated to act in the local land-use and development arena when an important national interest is perceived to be at stake. Thus Congress has enacted sweeping controls on surface mining, including the prohibition of development having an adverse impact on properties listed in the National Register of Historic Places. These controls have been upheld by the U.S. Supreme Court. Hodel v. Indiana, 101 Sup. Ct. Rptr. 2376 (1981). Congress has also granted the National Park Service authority over local zoning regulations in establishing several National Seashores and other units of the National Park System. Of particular note is Congress' enactment of legislation giving the National Park Service power to regulate private development outside Redwood National Park that has an adverse impact on park resources. And just this past year, the Federal Communications Commission preempted local aesthetic restrictions on satellite dishes based on its mandate to promote commuications nationwide. Federal Register, February 14, 1986, p. 5519-27.

CONCLUSIONS

Based on these precedents, it is clear to me that under either the Property Clause or the Commerce Clause, Congress has broad authority to enact laws and regulations that protect federal lands and the man-made and natural environment of the Capital and its environs from the adverse impacts of development on private lands. Of course, any laws and regulations enacted by Congress must be reasonably related to that purpose, but the courts show great deference to the legislative judgement unless it is patently unreasonable and there is no conceivable connection between the two.

Can Congress justify imposing height limits on buildings near federal parkland or scenic highways? What if the building is several miles from the area to be protected--could it pose a serious enough threat to justify action? In short, I believe the answer to both questions is yes.

Given the importance of the Capital, with its many significant monuments and sites, to the history of the nation and the importance of tourism to the economy of the entire region, I have little doubt that the courts would readily uphold congressionally imposed height restrictions on buildings on private land in states surrounding the District of Columbia.

As architectural critic Paul Goldberger has written, Washington's monumental skyline, free of skyscrapers, is an international symbol that makes our Capital a special place, distinguishing it from all others. Moreover, the National Capital Parks are some of the most heavily visited units of the National Park System, hosting millions of visitors annually who generate millions of dollars in tourist revenues for the local economy. Given these facts, in my mind Congress has ample authority to protect federal monuments such as the Capitol and the Washington Monument, federal parkland such as the Mt. Vernon ~~George Washington Parkway~~ Memorial Highway, and national historic landmarks such as Mount

Vernon from the visual intrusion of any high-rise building of the magnitude of the PortAmerica tower, be it fifty-two or forty-two stories tall.

I do not make these statements lightly, because as I said earlier, I am an elected local government official myself. I believe that most local land-use decisions should be made by local governments whose citizens will have to live with the results. But when an important federal interest such as the aesthetic well-being of our nation's Capital is at stake, Congress clearly has the authority to act. These actions must, of course, respect other constitutional guarantees such as the prohibition against the "taking" of property without just compensation, but I see little danger of running afoul of these protections if Congress is simply limiting the height of a structure, not prohibitiing all reasonable use of the land in question.

I would be very happy to discuss any of the legal points I have addressed in this testimony with you and answer any questions you might have. Thank you very much.

National Trust for Historic Preservation

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Testimony of

J. JACKSON WALTER,

PRESIDENT OF THE NATIONAL TRUST FOR HISTORIC PRESERVATION

before the

SENATE COMMITTEE ON

ENVIRONMENT AND PUBLIC WORKS

THE PORTAMERICA PROJECT

October 1, 1986

PortAmerica illustrates the vulnerability of this nation's capital city to intrusions from beyond its borders. As the towers sprouting in Rosslyn, Virginia across the Potomac already painfully demonstrate, the symbolic and visual preeminence of Washington's monumental core is protected only from development physically within the District of Columbia's borders. The National Trust for Historic Preservation believes that construction of PortAmerica's proposed 42-story, 632-foot-high tower and its obvious visual effects on the U.S. Capitol, the Washington Monument, and other elements of the L'Enfant Plan would be itself an historic event of the saddest nature, repeating the tragedy of Rosslyn. The federal government must enact legislation in the national interest that will prevent any action that would diminish the preeminence of our capital.

The National Trust is pleased to testify today in support of protection of our historic capital city. In so doing the National Trust is carrying out its dual mission, as chartered in 1949 by Congress, of serving as a steward of historically significant properties and as an advocate for preservation of our nation's heritage. We also specifically represent our 175,000 members, approximately 25,000 of whom reside in the capital area.

None of America's historic resources is more important than the landmarks of democracy located in our capital city. The Capitol, Washington Monument, White House, and Lincoln and Jefferson Memorials, together with the other elements of the L'Enfant Plan, are monuments of freedom, the essence of this country's cultural foundation. These monuments are singularly important as the unyielding symbols of principles which stimulated America's creation and which invigorate America's evolution. Visitors to the capital from throughout the nation and world expect to see the same views of our landmarks that their parents saw and that they have seen in pictures and other forms. As recently as 1983 the National Trust's members and the people of this country demonstrated in no uncertain terms their love of the capital's monuments in their historic configuration. Protests poured in from throughout the nation against a proposal which called for alteration of the U.S. Capitol's West Front. Congress responded to public demand and voted overwhelmingly to restore the West Front and save its historic facade.

Simply expressed, the historical view of America's Capitol building and Washington Monument area is one of the things in life that one believes one can count on to remain unchanged and unmarred. This assumption is a testament to the strength of America's historic foundation and a function of faith in America's future. Visual or other intrusion on the Capitol and Washington Monument area would undermine the power of the statement these landmarks make about our nation.

Key to our capital's historic statement is the low scale of Washington, D.C.'s buildings. This scale is not an accident of fate but the intended result of Congressional action first taken in 1899 specifically in response to construction of the Cairo Hotel, whose unprecedented 165-foot height shocked Washington. The U.S. Congress, galvanized by the demonstrated reality of the vulnerability of the capital's symbolic and visual preeminence, reinforced the City Council's passage of a local height limitation by enacting a similar federal law to ensure protection of the national interest. Thus, federal enactment of the city's building limit implicitly recognized the U.S. Capitol and the Washington Monument as the standard, whose preeminence no city structure should rival.

The issue challenging us today is not the design or worthiness of the PortAmerica tower, but the effect of its height and mass on the visual and symbolic presence of the Capitol and Washington Monument area. Congress' 1899 enactment of a building height limit was not prompted by criticism of the design of architect Thomas F. Schneider's Cairo Hotel. Instead, Congress took action in the national interest to protect resources of paramount significance in the nation's history. Our recommendation today that Congress supplement its original 1899 action, by protecting the Capitol and Washington Monument area from intrusions outside the city limits, is not a criticism or comment on the PortAmerica tower but a recommendation made on behalf of the national interest in the capital city's historic landmarks.

Any proposed action which might detract from the visual and symbolic preeminence of our capital's landmarks affects the citizens of America nationwide. The local zoning laws of Prince Georges County, Maryland and Rosslyn, Virginia understandably reflect only local interests and do not require consideration of effects on the nation's capital. Prince Georges County officials at all levels, for example, have asserted that PortAmerica's tower fully complies with Maryland law. Whether or not this is true, federal law is the most appropriate and sure means of protecting the preeminence of the nation's capital. However, existing federal law is inadequate to meet the challenge presented by development pressures in the vicinity of the nation's capital.

Federal agency environmental review responsibility is not triggered under existing law until the project proponent seeks some form of approval or assistance from the federal agency. Thus, although we can anticipate that nine federal agencies eventually will be involved in some capacity with PortAmerica, no agency yet has been required to assume environmental review responsibility. The Federal Aviation Administration's current review of the tower's height is limited to the issue of air navigation safety. The National Capital Planning Commission's consideration of PortAmerica's environmental effects is a result of a Memorandum of Understanding (MOU) designed to fill a review void left by parkland transfer legislation. The MOU, however, does not address the tower portion of the PortAmerica proposal.

Federal environmental protection laws such as the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA) were enacted precisely because of public concern that development proposals could otherwise destroy resources important to the nation in the absence of balanced planning. Thus, the NHPA and NEPA establish federal review processes which allow consideration, including public input, of project impacts on cultural and natural resources and exploration of alternatives to avoid or mitigate adverse impacts. The success of these processes depends on early coordination and consideration of project impacts as an integral part of project planning. The National Trust is particularly concerned about federal agencies' ability to satisfy the demands made of them by existing federal law. In cases such as PortAmerica, the law confronts federal agencies with a fractured process in which environmental impacts of national implication will not be considered until after the project has been planned in detail. In this regard, we are concerned not only by the tower's visual effects on the capital's monuments, but by possible effects on other historic resources including Mt. Vernon, the Alexandria, Virginia Historic District, and the Addison House Archeological Site and possible burial ground of John Hanson, first President of the United States under the Articles of Confederation.

In addition, existing law provides no means of controlling building height or other intrusions on the capital's historic resources when a proposed project does not require a federal permit or some form of federal approval. The intrusive towers of Rosslyn, Virginia, for example, were built without having to consider impacts on resources outside of Virginia because the projects required no federal permits.

Finally, even where federal approvals are required, the Advisory Council on Historic Preservation is limited to commenting on a project's impacts and cannot require project modification. Final decisionmaking is left to the federal permitting agency already burdened with a myriad of considerations. Thus, federal environmental review of project impacts on cultural resources is nonexistent where there is no federal involvement and does not guarantee protection even where federal involvement does exist. This may be appropriate in most circumstances but appears to the National Trust to be grossly inadequate when the Capitol, the Washington Monument, and other historic resources of our nation's capital may be affected.

The National Trust urges Congress to act swiftly to guarantee the integrity of the unique symbolic and visual preeminence of our nation's capital. Federal legislation alone will ensure preservation of these historic resources for future generations. There is no more appropriate way to commemorate this anniversary year of the National Historic Preservation Act enacted by Congress on October 15, 1966. In addition, visitors from throughout America and the world will converge on Washington, D.C. in October of 1987 when the National Trust and the U.S. Committee of the International Council on Monuments and Sites host the 40th National Preservation Conference and the Eighth General Assembly, respectively. Let us act now in the national interest to protect the preeminence of America's historic capital city and have particular cause for celebration in 1987. The National Trust offers its expertise and drafting assistance to further that effort with all possible speed.

STATEMENT OF ROBERT A. PECK, PRESIDENT, D.C. PRESERVATION LEAGUE BEFORE A HEARING OF THE U.S. SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

October 1, 1986

Mr. Chairman, I am Robert Peck, President of the D.C. Preservation League, a private, nonprofit organization with over 1200 members. DCPL is the citywide citizens' historic preservation organization. We concentrate most of our efforts on downtown Washington.

Thank you for inviting us to testify today on PortAmerica. For me, this is a return to the room around which my professional life was centered for more than four years as a staff member of the Committee. For the Preservation League, it is a return to the Committee, too.

When the League, under its former name, Don't Tear It Down, was rallying support to save the Old Post Office on Pennsylvania Avenue, this Committee held hearings, halted plans for demolition, and eventually reported the legislation that resulted in the building's splendid and productive renovation.

The Board of Directors of the D.C. Preservation League has not taken a position on the PortAmerica project. Today, I can offer only my personal views, with no assurance that the League would fully embrace them as its own.

You will hear a great deal at this hearing about the genius of the city plan of Washington. I would make just a few points about it.

It is often said that L'Enfant's plan was essentially a two-dimensional creation, the third dimension to be provided by the architecture of others. That is true only to a degree.

As any surveyor's plat must be, L'Enfant's plan was an overlay on a specific three-dimensional site. And a significant aspect of L'Enfant's genius was his opportunistic use of the topography assigned to him by the Residency Act and more particularly by George Washington.

Congress's House, as the plan called it, was to sit atop Jenkins Hill. The constitutional primacy of the legislature was to be embodied both in the radial street plan and the three-dimensional topographic plan of the city.

This Capitol Hill, as we know it, is one feature on a ridgeline that encircles the monumental capital. From its northwestern end, upon which stand the National Cathedral (and, unfortunately, the new Soviet embassy) to its southeastern end in Anacostia (and St. Elizabeth's Hospital), this ridge outlines a bowl containing the city.

The PortAmerica project threatens to overwhelm by its height the natural boundaries of this topographic enclosure.

But a more important point remains. Washington, Jefferson, and L'Enfant intended for the capital to succeed not just as an architectural set-piece, but as a thriving residential and commercial city as well. It happens that the L'Enfant Plan, ignored in much of the 19th century and surviving only fortuitously into this century when it could be revived, has been a key to that larger success.

The national capital region is one of the nation's strongest economically. Surely only of the area's strongest assets in the inter-city (and, indeed, international) competition for business--and particularly for real estate investment--is the physical attractiveness of its central city and its surrounding suburbs.

That attractiveness is in no other way so immediately evident as in its low building heights. Our height limit is what visitors cite most frequently when asked what sets this city apart. And the height limit had its origins in the tradition that the Capitol building, set on its hilltop, should dominate the Washington skyline.

From time to time, one hears it said that Washington needs some vertical punctuation points. That sort of advice seems to come from those who either have no appreciation for the uniqueness of this city, or whose pursuit of ephemeral, short-term gain prevents them from recognizing the longer term advantage the city's unique physical plan secures.

If anyone should have the hubris to ordain a need for vertical punctuation of the Washington skyline, let it be the public's representatives in Congress. And let them make that determination when they find as good a justification as a monument to George Washington.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
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STATEMENT OF JOHN W. RHOADS, CHAIRMAN
PRINCE GEORGE'S COUNTY PLANNING BOARD
BEFORE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
OF THE UNITED STATES SENATE
OCTOBER 1, 1986

I. Statutory Responsibility of the M-NCPPC

The Maryland-National Capital Park and Planning Commission (M-NCPPC) was created by the Maryland General Assembly in 1927 (Chapter 448 of the Laws of 1927). The Commission was created for two primary purposes: (1) to plan highways, parks and other public places and public works and to zone properties within its jursidiction, and (2) to provide effective regional control over subdivision planning and construction. The purpose clause of that enabling legislation emphasizes the need for regional coordination of land use planning. This same Act created the Maryland-Washington Metropolitan District within Montgomery and Prince George's Counties contiguous to the District of Columbia over which the Commission was to have jurisdiction.

In 1959 the Maryland Legislature enacted the "Park and Planning Commission" Act to continue and reorganize the Commission (Chapter 780 of the Laws of 1959). This act also created the Maryland-Washington Regional District within Montgomery and Prince George's Counties, contiguous to the District of Columbia. The Commission retained its original authority to acquire and develop land for parks and roadways within the Metropolitan District and was also authorized to acquire land for parks outside the Metropolitan District [but within the Regional District].

Other powers of the Commission resided in its administration within the Regional District. These powers may be divided into two primary categories: (1) general regional land use planning, and (2) zoning powers and subdivision control. The Commission was directed to formulate a general plan for the physical development of the Regional District providing for: (1) the location, arrangement, character and extent of roads, water ways, water fronts, beaches, docks and wharves, parks, forests, squares, aviation fields, airways, subways, wildlife refuges, open development areas, and other ways, grounds and open spaces, (2) the general location of public, including Federal, buildings and other public properties, (3) the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for light, transportation, communication, power, and other purposes, (4) the preservation and development of forests and natural scenery, (5) the general location and extent of housing and community projects and developments, and (6) a zoning plan for the regulation of the height, area, bulk, location, and uses of buildings and the uses of land, and other factors of urban, suburban, rural, and regional planning. The purpose of this general plan was to guide and accomplish a coordinated, comprehensive, adjusted and systematic development of the Regional District with public and private development of other parts of Maryland and the District of Columbia.

The Enabling Statute of the Commission is now codified in Article 28 of the Annotated Code of Maryland. The Maryland-Washington Regional District presently comprises most of Montgomery and all Prince George's Counties with the exception of the City of Laurel. The Commission is comprised of 10 members, five of whom are appointed from Montgomery County and five from Prince George's County. Members of the Commission appointed by the governing bodies of each county are designated the Montgomery County Planning Board and the Prince George's County Planning Board, respectively. (§7-111 of Article 28 of the Annotated Code of Maryland.) The Planning Boards are responsible for planning, platting and zoning functions primarily local in scope, as distinguished from the regional planning functions of the Commission relating to or affecting the entire regional district as a planning unit. The respective County Councils of Montgomery and Prince George's Counties are designated as the District Councils for the Regional District and exercise final authority over planning and zoning matters. The Planning Boards of the respective counties prepare and adopt master plans, make recommendations to the District Councils on zoning matters and grant final approval of all subdivisions of land within the Regional District.

II. PortAmerica Project

Description of PortAmerica Project

The PortAmerica project consists of two distinct parcels of containing approximately 443 acres of land and water area. The south parcel or "Waterfront Parcel" (formerly the Smoot Bay and Gudelsky parcels) is 361.33 ac. with 240 ac. of submerged land. It borders Smoot Bay on the Potomac River Shoreline.

The over 200-acre bay was created by gravel mining operations in the early 1900's. Bluffs ranging in height from 10 to 20 feet line most of the shoreline; the narrow, rocky, and sandy beach at their foot is tidally submerged. The nearshore area is flat to gently sloping, with the terrain steepening as the distance from the shore increases. Dense woods cover the majority of the lower parcel.

To the north of the "Beltway Parcel" (formerly the Oxon Hill Straw Parcel) is 82.02 acres and is a long, narrow area between I-95 and Oxon Hill Road. The terrain is heavily wooded and relatively steep, with slopes exceeding 25 percent in some areas and an elevation drop from the east to west of about 150 feet.

A. Master Plan

The development of a Waterfront Center at Smoot Bay (site of the PortAmerica project) was contemplated as early as 1981 with the adoption and approval of the Subregion VII Master Plan by the Commission and the District Council. That document encourages a "unique type of development" incorporating "an urban character, mixed use employment and waterfront center" (p. 98 et. seg.) for the Smoot Bay area. The Master Plan for Subregion VII was subjected to three duly advertised hearings before the Prince George's County Planning Board of the Commission prior to its adoption. Two (2) more hearings and three (3) worksessions were held by the District Council prior to final approval of the plan in October of 1981. To assist in the preparation of this plan the Planning Board appointed a Citizen's Advisory Committee from nominations made by local and countywide groups and associations and solicited comments from various public agencies in the County and the State and the National Capital Planning Commission.

B. Zoning

The PortAmerica project (previously designated Smoot Bay Waterfront Center or Bay of the Americas) was zoned M-X-T under six different zoning map amendment petitions. The provisions of the M-X-T Zone are found in Subtitle 27 (Zoning), Section 27-542 through 548, et. seg. of the Prince George's County Code. Subtitle 27 was enacted by the District Council of Prince George's County pursuant to Section 8-101 of Article 28 of the Annotated Code of Maryland which grants authority to adopt a zoning ordinance to regulate land use within the Regional District.

The procedures to be followed for a Zoning Map Amendment to the M-X-T Zone are found in Subtitle 27, Section 27-199 through 213 et. seg. of the Prince George's County Code. Generally, these sections require that an application be filed with the Planning Board which advises the Zoning Hearing Examiner of the filing. The Zoning Hearing Examiner establishes a hearing date and the Clerk of the Council or the Zoning Hearing Examiner publishes notice of the hearing twice in three newspapers at least 30 days prior to the hearing. The Planning Board is also required to post signs on the property giving the date, time, place and purpose of the hearing. If a historic resource included on the Prince George's County Historic Sites and Districts Plan is located on the property than the application is also referred to the Historic Preservation Commission of the county for their comments.

In connection with each application, a report by the technical staff of the Planning Board is prepared. This report contains the staff recommendation, and a delineation of land uses and zoning of surrounding properties. In preparing their report the technical staff solicits comments from various public agencies. With respect to the PortAmerica proposal, comments were solicited from the following agencies:

Referrals were also sent by these agencies to various other local and federal agencies which participated in the review process.

- National Capital Planning Commission
- Prince George's County Historic Preservation Commission
- Prince George's County Historical and Cultural Trust
- Maryland State Highway Administration
- Prince George's County Department of Public Works and Transportation
- Washington Suburban Sanitary Commission
- Maryland Water Resources Administration
- Maryland Department of State Planning
- Bureau of Environmental Health
- Southern Maryland Health Systems Agency
- Prince George's County Health Department
- Prince George's County Police Department
- Prince George's County Fire Department
- Prince George's County Public Schools
- Prince George's County Library System
- Prince George's County Department of Parks and Recreation

A copy of the Technical Staff Report is sent to all parties of record and the Planning Board for its consideration as to whether a hearing should be held in addition to that held by the ZHE. If the Planning Board decides to hold a hearing it gives at least 30 days notice to all parties of record and transmits its recommendation by resolution to the District Council.

In any case the Zoning Hearing Examiner is required to hold a public hearing pursuant to Section 24-127. This hearing must follow the procedures of Section 27-129 and may be attended by all parties of record. The People's Zoning Counsel for Prince George's County also participates in these hearings to protect the public interest and insure the compilation of a complete record (Section 27-139).

Within 30 days after the Zoning Hearing Examiner files his written decision any person of record or the People's Zoning Counsel may file exceptions with the District Council. The District Council considers all exceptions before making its final decision on the rezoning proposal. The District Council's deliberation is limited to the record presented before the ZHE and oral argument from Parties of Record or the People's Zoning Counsel.

All six (6) zoning map petitions for this project were reviewed by the District Council and approved by adoption of Zoning Ordinances No. 44 through 49 of 1983.

C. Conceptual Site Plan

The next required stage in the development review process for the PortAmerica M-X-T project was submission of a Conceptual Site Plan. In early 1986 such a plan was filed with the Development Review Division of the Prince George's County Planning Department (SP-86013), pursuant to Section 27-273 of the Prince George's County Code.

This plan was reviewed for compliance with Section 27-267-280 et. seg. which states general requirements for Conceptual Site Plan approval; Section 27-546 which imposes specific requirements for M-X-T zoned properties; and the conditions imposed by the District Council in rezoning the property to the M-X-T Zone. The Conceptual Site Plan was submitted to the following public agencies for review:

National Capital Planning Commission
Prince George's County Department of Parks and Recreation
Prince George's County Historic Preservation Commission
Prince George's County Historical and Cultural Trust
Maryland State Highway Administration
Prince George's County Department of Public Works and Transportation
Washington Suburban Sanitary Commission
Maryland Water Resources Administration
Maryland Department of State Planning
Bureau of Environmental Health
Southern Maryland Health Systems Agency
Prince George's County Health Department
Prince George's County Police Department
Prince George's County Fire Department
Prince George's County Public Schools
Prince George's County Library System
Maryland Historical Trust
Maryland Natural Heritage Program
Maryland Department of Natural Resources
Maryland Department of Environmental Resources
Maryland Forest Service
Maryland Water Management Administration, Office of Environmental Programs
Maryland State Water Management Administration
Maryland Fisheries

Referrals were also sent by these agencies to various other local and federal agencies which participated in the review process.

A staff report was submitted to the Planning Board on April 24, 1986 by the Development Review Division which recommended approval of the Conceptual Site Plan with a number of conditions and considerations. Two (2) public hearings were conducted by the Planning Board on this plan after being duly advertised pursuant to the Prince George's County Zoning Ordinance and the Rules of Procedure of the Planning Board and administrative practices of the Prince George's County Planning Department.

Final approval of the Conceptual Site Plan was granted by the Planning Board on May 9, 1986, by Resolution No. 86-152. Although Planning Board action on any Conceptual Site Plan is appealable to the District council, no such appeal was necessary with respect to the subject property since the District Council had provided as a condition of the rezoning of this property to the M-X-T Zone that the Conceptual Site Plan be referred for its review. After reviewing the record of the Planning Board's hearing and hearing oral argument, the District Council affirmed the Planning Board's decision on July 21, 1986.

Subsequent to the approval of the zoning for the PortAmerica Project, the Maryland General Assembly enacted a comprehensive program to protect the Chesapeake Bay and its tributaries. This act is known as the Chesapeake Bay Critical Area Protection Program (Chapter 794 of Acts of 1984). Among other things, this law now requires that prior to approval of any subdivision plat, zoning amendment, variance, special exception, conditional use permit or use of a floating zone affecting land or water in the critical area, the following findings must be made by the local jurisdiction.

(1) The proposed development will minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; and

(2) The applicant has identified fish, wildlife, and plant habitat which may be adversely affected by the proposed development and has designed the development so as to protect those identified habitats whose loss would substantially diminish the continued ability of populations of affected species to sustain themselves.

The conceptual site plan for this project was reviewed pursuant to these criteria and found to comply.

D. Future Development Phases

There remains at least three subsequent phases of review of this project by the Prince George's County Planning Board or its staff before construction may commence. They are subdivision approval, detailed site plan approval and building permit review.

All subdivisions of property for development within the Regional District must be reviewed by the Prince George's County Planning Board pursuant to Subtitle 24 of the Prince George's County Code. Subtitle 24 is enacted pursuant to Section 7-116 of Article 28 of the Annotated Code of Maryland. Section 7-117 requires that the Planning Board act to approve or disapprove all preliminary plans of subdivision within 70 days of their submission by the property owner. A public hearing is held on the plan after being duly advertised by the posting of the property pursuant to the Rules of Procedure of the Prince George's County Planning Board. No application has as yet been filed for subdivision of the PortAmerica project.

Preliminary Plans of Subdivision are reviewed primarily with respect to their compliance with the applicable master plan and zoning requirements, environmental impact and adequacy of public facilities. Within two years of approval of a preliminary plan of subdivision, a property owner must file a final plat of subdivision which conforms to the preliminary approval. The Planning Board has final approval of Subdivision with respect to this project which is appealable to the Circuit Court for Prince George's County

At anytime after approval of the Preliminary Plan of Subdivision, the developer of an M-X-T project must submit a Detailed Site Plan to the Planning Board for approval pursuant to Section 27-282 of the Prince George's County Code. Planning Board action on a Detailed Site Plan is appealable to the District Council in the same manner as provided with respect to Conceptual Site Plans.

Once all of these approvals are obtained the property owner may then apply for building permits which are reviewed by the Planning Department staff for compliance with all development conditions attached to the property prior to issuance by the Prince George's County Department of Environmental Resources.

TESTIMONY BY
ROBERT K. DAWSON
ASSISTANT SECRETARY OF THE ARMY (CIVIL WORKS)

SENATE OVERSIGHT HEARING ON FEDERAL REGULATORY INVOLVEMENT ON THE PORTAMERICA PROJECT

October 1, 1986

Good afternoon, Mr. Chairman and members of the Committee. I am pleased to provide testimony on the Army Corps of Engineers regulatory responsibilities for the PortAmerica project.

The Army Corps of Engineers issues permits generally under three statutes: Section 10 of the River and Harbor Act of 1899; Section 404 of the Clean Water Act; and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (Ocean Dumping). The Baltimore District, Corps of Engineers, whose area of responsibility includes Prince George's County, Maryland, has not yet received an application for the PortAmerica project. However, from the information presently available to the District, permits under Section 10 of the River and Harbor Act, and Section 404 of the Clean Water Act will most likely be required from the Corps of Engineers.

Under Section 10 of the River and Harbor Act, the Corps of Engineers regulates any type of construction, excavation or depositing of material in navigable waters, or any other work affecting the course, location, or condition of such waters. Until 1968, the Corps of Engineers review of

Section 10 permit applications was restricted to impacts on navigation. After 1968, the application review was expanded to consider additional public interest factors such as impacts on the environment, socioeconomics, safety, and, in general, the needs and welfare of the people. This review is known as the Corps of Engineers public interest review.

Section 404 of the Clean Water Act authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits after notice and opportunity for a public hearing, for the discharge of dredged or fill material into waters of the United States. In addition to the public interest review, the Corps of Engineers evaluates applications for discharges under Section 404, according to the 404(b)(1) guidelines developed by the Environmental Protection Agency (EPA) in conjunction with the Secretary of the Army. These guidelines require consideration of project alternatives, effects on water quality, overall effects on the environment, and appropriate measures to minimize project impacts.

In addition to the specific reviews required under Section 10 of the River and Harbor Act and Section 404 of the Clean Water Act, the PortAmerica project will be subject to review by the Corps of Engineers under the National Environmental Policy Act (NEPA). The Corps of Engineers generally does not make a decision on the level of NEPA review (i.e. environmental assessment or environmental impact statement) until an application has been received, a public notice issued, and comments on the public notice considered. Also, I understand that there are several other Federal agencies involved such as the Federal Highway Administration, National Capital Planning Commission, the National Park Service, and the Federal Aviation Administration. These agencies may also have involvement under NEPA.

The Corps of Engineers may also conduct a review under Section 106 of the National Historic Preservation Act. Should such a review occur, the Corps will rely heavily on the State Historic Preservation Officer and Advisory Council on Historic Preservation for comments. However, the Corps of Engineers is the ultimate decisionmaker concerning Section 106 concerns.

The Baltimore District has had three preapplication meetings with the applicant. From these meetings, the Corps of Engineers understands that the project will include residential, commercial, and marina complexes. Further, the Corps understands that the development will be comprised of two tracts of land. One tract is approximately 210 acres abutting the Potomac River, and the other is a 90-acre tract separated from the 210-acre site by National Park Service land. The proposed 42-story office tower would be located on the 90-acre parcel. It is important to note that the 90-acre parcel with the 42-story office tower development is independent of the 210-acre waterfront tract. The Corps of Engineers understands that this 90-acre "site" may be developed whether or not the 210-acre site is developed.

The portion of the proposed development which would require Corps of Engineers permits under Sections 10 and 404 includes a 37-acre fill in shallow water along the shore of the Potomac River and a 250 slip marina complex. The proposed development on the 37 acres of fill subject to Section 404 includes a proposed 5-story hotel, a boat terminal, a 2-story retail building, residential units, and a waterfront promenade.

In addition to preapplication meetings with the potential applicant, the Corps of Engineers has met with representatives of the National Capital Planning Commission, the National Park Service, the Federal Highway Administration, and the Federal Aviation Administration. As a result of regulatory involvement by each of these agencies, coordination with these agencies will continue throughout the Corps permit evaluation process.

If an application is received for the proposed project, the Corps of Engineers will issue a public notice requesting comments from other Federal agencies, including the Environmental Protection Agency, the U.S. Fish and Wildlife Service, and National Marine Fisheries Service, as well as members of the general public and other interested parties. The public notice will also offer the opportunity to request a public hearing on the proposed project.

Once comments are received on the public notice for the activities regulated by the Corps of Engineers, the Corps will make determinations on whether a public hearing is needed to develop information not otherwise available, and whether an environmental impact statement is required.

The Army Corps of Engineers will certainly evaluate any application on PortAmerica under all applicable laws and regulations just as it does on over 12,000 applications nationwide each year. It is our intention to concentrate our efforts on concerns related to Corps of Engineers responsibility and leave concerns and disputes unrelated to such responsibilities to other appropriate regulatory entities, including local zoning authorities, to the extent possible.

As I have indicated throughout this testimony, an application has not yet been received for the proposed development. The Corps of Engineers cannot project what requirements of NEPA and other laws will be, nor project any schedules, until such application is received and comments have been obtained officially.

Thank you for the opportunity to present the Army Corps of Engineers views on the proposed PortAmerica development.

STATEMENT OF R. A. BARNHART, ADMINISTRATOR,
FEDERAL HIGHWAY ADMINISTRATION,
U. S. DEPARTMENT OF TRANSPORTATION
BEFORE THE
SENATE ENVIRONMENT AND PUBLC WORKS COMMITTEE
REGARDING
OVERSIGHT HEARING ON FEDERAL ENVIRONMENTAL ASSESSMENT PROCEDURES AFFECTING THE PORTAMERICA PROPOSAL (PRINCE GEORGE'S COUNTY, MD.)

October 1, 1986

The Federal Highway Administration (FHWA) has been asked to submit information on its role concerning the PortAmerica proposal in Prince George's County, Maryland. The FHWA has previously submitted similar information to the National Capital Planning Commission (NCPC) on the role of this agency with respect to PortAmerica and has participated during the summer in an interagency meeting sponsored by NCPC regarding any environmental documentation requirements necessary for the PortAmerica project.

The Committee's first request is that we address the statutory responsibility of FHWA specifically with respect to the PortAmerica project. FHWA's only statutory authority would be on any future request for access to any Interstate highway routes under 23 U.S.C. 111. That provision of law provides that "All agreements between the Secretary [of Transportation] and the State highway department for the construction of projects on the Interstate System shall contain a clause providing that the State will not add any points of access to, or exit from, the project in addition to those approved by the Secretary in the plans for such project, without the prior approval of the Secretary."

Any such request would be made by the Maryland State Highway Administration (SHA) and would be made only if the Maryland SHA found the developer's request for new access satisfactory. In exercising such authority, our FHWA review would be limited to the safety of the traveling public, the integrity of service, and traffic operations on the Interstate freeways and any environmental impacts of the interchange connections.

The Committee's next question concerns the specific FHWA approval/disapproval procedures affecting the project. The FHWA does not have any overall approval or disapproval authority on the PortAmerica Project. Based on our understanding of the project concept, FHWA has no action ultimately affecting the overall approval of the project. The developer has publicly stated that PortAmerica can be constructed without direct access to the Interstate freeways because there is presently access to the Interstate from Oxon Hill Road. Accordingly, our only anticipated involvement would be to act on some future request for access to the Interstate freeways.

Under established Federal-State procedures, the State highway agencies are responsible for initiating all requests for additional access to Interstate highways. When a State determines that additional access is necessary, it submits a proposal to the FHWA with documentation establishing need on the basis of traffic requirements, economics, safety, and the availability of other access. As of this date, the State of Maryland has not made any formal request for approval of access to the Interstate system to accommodate the PortAmerica Project. FHWA's primary concerns on additional access are the safety and operation of the Interstate facility itself. The review looks at the impacts of the additional traffic imposed on mainline areas that either exist already or are introduced by the proposal. The review also looks at impacts on adjacent existing interchanges. Geometric adequacy is reviewed to assure compliance with minimum standards and good design practice. Signing plans are reviewed for comprehension and ability of drivers to react to signs as well as compliance with the requirements of the Manual on Uniform Traffic Control Devices.

The Committee has asked about our coordination with other Federal agencies on the PortAmerica project. This past summer the FHWA participated in an interagency meeting sponsored by the NCPC regarding any environmental documentation requirements necessary for the PortAmerica project. We had previously agreed that a coordinated environmental review would be desirable and offered to serve as a coordinating agency on the preparation of an Environmental Impact Statement if one is prepared. At some future date, we would be coordinating with the Maryland Department of Transportation if it submits a request to FHWA for approval of access to the Interstate System.

Before we would take action on a request, we would coordinate with NCPC to determine whether the conditions of a May 7, 1985, memorandum referenced in an Act of December 26, 1985, Pub. L. 99-215, have been met. These conditions relate to a number of restrictions on the development of the waterfront. This Act authorized the Secretary of the Interior to convey certain land to be used for an access road to the PortAmerica project to the Maryland-National Capital Park and Planning Commission provided that the terms and conditions of that memorandum are met.
The Committee requested information on FHWA actions and applicable processes thus far regarding PortAmerica. The FHWA does not have any current involvement in the PortAmerica project. We were contacted informally in the spring of 1985, by the project's developer to explore possible access to I-295 and I-95. In March 1985, our Maryland Division Office reviewed (at the request of the Maryland State Highway Administration) a proposed concept for access to the Interstate from PortAmerica. Our comments were limited to those items which would affect the integrity of the Interstate System.

The Committee asked for information on the opportunity for public participation and review. The role of the FHWA in approving access points is one of approval or disapproval of proposals submitted by the State. We review the documentation submitted, including comments by our field offices, and make a decision on the safety and operational effects of the access point. During our review, we do not normally consult other agencies or the public. If we approve the access point, we do so on the condition that the State will follow standard project development procedures before constructing the interchange. Standard project development procedures include assessment of environmental impacts, coordination with other agencies, involvement of the public and public hearings processes, etc. Any future FHWA responsibilities under the National Environmental Policy Act (NEPA) would be limited to those effects of any proposed interchange ramps which require revision to the present Interstate access agreements between the Maryland SHA and FHWA.

The Committee's last request was for a timetable for additional FHWA procedures as they affect the PortAmerica Project. The FHWA would not consider a request for access to the Interstate freeways until after the Maryland National Capital Park and Planning Commission has granted access across its land pursuant to Public Law 99-215. Consequently, our involvement would be after the National Capital Planning Commission has been assured that the proposed development complies with the May 7, 1985, memorandum cited in Public Law 99-215. Any FHWA involvement would be limited to the time necessary to discharge any responsibilities discussed herein.

The Department and FHWA will be available to work with the Committee in connection with the PortAmerica project and we can assure you that we will carefully consider and coordinate with the Committee on any actions which are the responsibility of this agency.

* * *

STATEMENT OF JOSEPH DEL BALZO, DIRECTOR, EASTERN REGION, FEDERAL AVIATION ADMINISTRATION, FOR THE RECORD OF THE OCTOBER 1 HEARING OF THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS REGARDING THE PROPOSED PORT AMERICA CONSTRUCTION. OCTOBER 1, 1986.

Mr. Chairman and Members of the Subcommittee:

I am Joseph Del Balzo, Director of the FAA's Eastern Region. I am pleased to have the opportunity to describe for the Subcommittee the procedures which the FAA follows in determining the impact of proposed structures on navigable airspace.

At the outset, I would like to describe briefly FAA's implementation of Part 77 of the Federal Aviation Regulations relating to "Objects Affecting Navigable Airspace." Part 77 provides the regulatory means through which the FAA Administrator implements §1101 of the Federal Aviation Act of 1958 (49 U.S.C. 1501). This statutory provision directs the Administrator to require adequate public notice of construction or alteration of any structure where notice would promote safety in air commerce.

Subpart B of Part 77 requires that notice of construction or alteration be provided to the director of the FAA region wherein construction is proposed. It further sets forth the circumstances under which notice is required as well as the time and form in which the notice must be provided.

When notice is filed with a regional office as prescribed by Subpart B, an air traffic specialist screens the form to determine if the notice was in fact required for the proposed construction, and acknowledges its receipt.

Upon determining that notice was in fact required under Part 77, the specialist then considers the proposed construction in light of the obstruction standards of Subpart C of Part 77. If the proposed construction does not meet those criteria, the construction proponent is advised his structure is not an obstruction. If the construction meets or exceeds the screening requirements of Subpart C, but would clearly not pose a hazard to air navigation, the specialist advises the proponent accordingly. However, if the construction could constitute a hazard to air navigation, the proponent is advised that further aeronautical study is necessary. The criteria used are fundamentally height of the structure and the consequent interference, including electromagnetic interference, with the airspace used by navigating aircraft. Pending completion of such an aeronautical study, it is presumed that construction would be a hazard to air navigation.

Normally when an aeronautical study is conducted, the Notice of Proposed Construction is circulated to other FAA regional elements responsible for flight safety in order to solicit their views and comments regarding the potential impact of the proposed structure on air navigation. Concurrently, a Notice of Aeronautical Study, containing the Notice of Proposed Construction, is circulated to known interested persons who are invited to offer their comments to the FAA regarding the aeronautical impact of the proposal. We are not legally empowered by the FAAct to consider other factors (such as zoning, aesthetics, or construction quality) in our obstruction determinations, nor would that be an appropriate role for an agency whose expertise is aviation safety.

If the comments which are received set forth substantial reasons why the proposed construction could have an adverse effect on air navigation, then it is determined whether an informal airspace meeting would assist in resolving the issue. When such a meeting is held, among others, those persons who initially provided comments are invited to attend. This affords the opportunity for further discussion of the matter and provides an informal forum in which differences may often be resolved. The purpose of this entire procedure is to assure that the affected persons as well as aeronautical experts are given a meaningful opportunity to participate in the FAA decision-making. Subsequently, all comments are evaluated and a determination is made by the agency as to whether the proposed construction would have substantial adverse effect on air navigation. If it is determined to have such an effect, a Determination of Hazard is made; otherwise, a

Determination of No Hazard is made. The determination is then issued to the proponent as well as to the other persons who participated in the aeronautical study. This determination becomes final unless a Petition for Discretionary Review is filed with the Administrator within 30 days after issuance . Except in the case of FCC building permits for towers, a determination of no hazard expires 18 months after its effective date.

I would like to underscore, at this time, that the FAA's determination under Part 77 does not approve, permit or prohibit construction of any proposed structure. Neither does it waive, suspend, or otherwise affect local rules, statutes, ordinances or other such requirements. The FAA has no legal basis with which to prevent construction of a structure, even one determined to be a hazard to air navigation. Authorization for construction is a matter which rests with others and is totally outside the scope of FAA's authority. Thus, the FAA determination serves merely as an advisory opinion regarding the anticipated effect of the proposed structure on aeronautical operations and the safe and efficient use of navigable airspace. The determination of hazard is merely an "administrative" announcement - not a determination of an actual safety threat - prior to altering the flight paths or use of an airport to keep aircraft away from a structure. Our responsibility is to assure that a structure will not be a hazard in actual terms - even if we term it a "hazard" administratively.

Before closing, I would like to note briefly the status of the FAA's actions on the Port America Notice of Proposed Construction. FAA Eastern Region officials have met several times with construction proponents on their proposal. Further, we have provided notice of the proposed construction to regional representatives of the Departments of Army, Air Force, and Navy as well as to the National Parks Service and the National Capital Planning Commission. We have circulated two Notices of Aeronautical Studies on the construction proposal to seek public aeronautical comments from a total of 258 interested organizations and persons.

The circularization response period ends today. An informal airspace meeting may then be held if determined by the FAA to be necessary to discuss the effects of the proposal and to gather additional facts or information relevant to the aeronautical study. We expect that it will take at least a week to review the materials provided in response to our request for aeronautical comments. Should we conclude that an informal meeting is not necessary, a determination could be issued in mid-October.

That completes my prepared statement, Mr. Chairman. The FAA would be pleased to provide such additional information as the Committee may find useful.

Divisions
Historic Landmarks
Litter Control
Parks and Recreation
Soil and Water Conservation
B. C. LEYNES, JR.
Director

COMMONWEALTH *of* VIRGINIA
Department of Conservation and Historic Resources
Division of Historic Landmarks
H. Bryan Mitchell, Director

221 Governor Street
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Statement of H. Bryan Mitchell
State Historic Preservation Officer
Commonwealth of Virginia
to
Senate Committee on Environment and Public Works

Mr. Chairman and Members of the Committee:

This statement is to affirm that, as Virginia's State Historic Preservation Officer, I have a strong professional interest in the proposed PortAmerica development project in Prince Georges County, Maryland. My interest is both substantive and procedural.

While I must begin by saying that our office has received no formal communication from a sponsoring federal agency or from the developer, we have become aware of the proposed project through press accounts and conversations with our colleagues in Washington. As a matter of substance it is clear that this project will have a visual impact upon Virginia. The tower will be prominently visible from many points along the Virginia side of the Potomac, so that one might look out upon this tower from such places as Mount Vernon, Old Town Alexandria, and Arlington House within Arlington National Cemetery. I emphasize again that we have not reviewed the proposal and so cannot at this point assess whether that visual impact is so great as to cause an adverse impact on Virginia landmarks. However, it is apparent that there will be some impact, so we want very much to be a part of any discussion on the final form this project will take.

As a matter of procedure, it is again apparent from our informal contacts that as many as nine federal agencies may ultimately review this project before it is allowed to proceed. On its face such extensive federal review appears to constitute federal involvement sufficient to trigger the review called for in Section 106 of the National Historic Preservation Act of 1966 as amended. As you know, review of such projects by the State Historic Preservation Office is a critical first step in the review process set out by Section 106. Early involvement by the state office in the planning process can prevent misguided effort and consequently can eliminate what can become costly delays later in that same planning process. Unfortunately, in this case no such early state office involvement has been possible, because no federal agency has referred the matter to us.

At whatever time this project is referred to our office for review and comment, we will assess the project's impact on National Register and Register-eligible properties in Virginia. Assuming that the materials submitted to us are adequate to conduct our review, we will complete our work within thirty days and forward our assessment to the sponsoring federal agency, the project sponsor, and the Advisory Council on Historic Preservation. We would then expect to participate in any negotiations triggered by that assessment on a schedule determined by the Advisory Council.

Our review of project proposals pursuant to Section 106 is carried out as a staff function under my authority as State Historic Preservation Officer. Our caseload is about 1500 projects per year. Consequently, we do not routinely hold public hearings on these cases, but we are always happy to have any comments from interested citizens or agencies.

If I can answer any questions or provide any further information on our interest in this case or on the formal Section 106 responsibilities we carry out, please let me know. We look forward to the opportunity to provide formal, substantive comments on the PortAmerica proposal.

STATEMENT OF CAROL B. THOMPSON

STATE HISTORIC PRESERVATION OFFICER FOR THE DISTRICT OF COLUMBIA

ON THE PROPOSED PORTAMERICA STRUCTURE

BEFORE THE

SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

OCTOBER 1, 1986

Good morning. My name is Carol B. Thompson, State Historic Preservation Officer for the District of Columbia.

Mr. Chairman, I appreciate the opportunity to respond to your questions with regard to the legislation under consideration by the Senate to limit the height of buildings in certain portions of the Washington Metropolitan Area. The immediate impact of this legislation is on the PortAmerica project in Prince George's County, Maryland. Since enactment of Home Rule, the District of Columbia government has strongly supported efforts which improve or enhance local self-determination. The Mayor of the District of Columbia therefore has expressed support of the

PortAmerica project through the Washington Area Council of Governments, and the Mayor is of the opinion that this issue should be decided by the people of the State of Maryland generally, and the residents of Prince George's County specifically.

Let me respond specifically to your questions concerning my office's responsibilities under section 106 of the National Historic Preservation Act of 1966, as amended. If the PortAmerica project is to require any federal license or is to benefit from federal assistance, the State Historic Preservation Officer for the District of Columbia will have a role in assisting federal agencies in compliance with their obligations to address the project's effect on historic properties. In this capacity, the State Historic Preservation Officer will participate in any Memorandum of Agreement or Understanding that results from section 106 consultation.

Within the context of section 106 review, the visual relationship between the PortAmerica tower and the monumental core can be thoroughly studied and assessed. This review includes the opportunity for public participation and comment, within specified timetables and procedures. It is obvious that the proposed PortAmerica tower, because of its height and location will have a visual impact on the monumental core of the

Nation's Capital. The State Historic Preservation Officer will cooperate in reviewing the effect of the project to the extent we are able under Section 106.

In the District of Columbia, the Historic Preservation Division, under my direction, has additional responsibility for reviews conducted in accordance with D.C. Law 2-144, the Historic Landmark and Historic District Protection Act of 1978. However, our local law does not apply to the PortAmerica project. Since the tower is not situated within the District of Columbia, it is, of course, exempt from our local building permit review process.

Thank you for this opportunity to allow me to testify in this matter. I am prepared to answer your questions.

STATEMENT OF
CYNTHIA GRASSBY BAKER
CHAIRMAN
ADVISORY COUNCIL ON HISTORIC PRESERVATION
ENVIRONMENT AND PUBLIC WORKS COMMITTEE
UNITED STATES SENATE
OCTOBER 1, 1986

The Advisory Council on Historic Preservation is pleased to provide testimony to the Committee at this oversight hearing on the PortAmerica proposal in Prince George's County, Maryland. The Council is quite concerned about this proposal and has taken an active interest in the public controversy that has been generated by aspects of the proposed plans. As such, we welcome this opportunity to share our views and to clarify for the Committee the Council's statutory role as it relates to the PortAmerica proposal.

The Council was established by the National Historic Preservation Act of 1966 to advise the President and Congress on historic preservation matters and to comment on Federal undertakings having an effect upon historic properties. Section 106 of the Act requires Federal agencies to take into account the effect of their undertakings on properties included in or eligible for the National Register of Historic Places and to afford the Council an opportunity to comment. The Council's regulations define how this commenting process is conducted. It should be noted that the Council's new revised regulations "Protection of Historic Properties" (36 CFR Part 800) take effect today. For your reference, I will include a copy of our new regulations with my written statement.

Through its commenting role under the regulations, the Council seeks to assist Federal agencies in exercising leadership in historic preservation to assure that Federal actions are consistent with historic preservation values to the maximum extent possible. When it is determined that a Federal action will adversely affect historic properties, the Council attempts to work with the agency, State and local officials, and members of the public to identify ways in which the public benefits of the project can be balanced with historic preservation interests. The Council's experience has shown that in most cases effective solutions can be achieved. The solution is set forth in a Memorandum of Agreement and by carrying out the undertaking in accordance with the terms of the agreement, the agency effectively fulfills its Section 106 responsibilities. In those instances where a Memorandum of Agreement cannot be achieved through consultation, the Council renders its final comments to the agency. These comments are not binding on an agency, but rather the agency is obligated to consider the Council comments in reaching a final decision on the undertaking. Thus, in the final analysis, while agencies are required to complete the

Section 106 process prior to final decisionmaking, they are not required to follow the advice and recommendations of the Council.

At the outset, let me state that the Council has not to date been contacted by any Federal agency for purposes of initiating compliance with Section 106 for their involvement in the PortAmerica project. Council representatives have attended several hearings and meetings conducted by the National Capital Planning Commission, have discussed the project informally with some of the involved Federal agencies, and have of course followed the debate in the newspapers over the height of the proposed World Trade Tower. Due to the growing concern of various Council members over the PortAmerica proposal, the Council staff provided a project briefing to the Council at its last meeting in July. After lengthy discussion the members asked that I convey to the President and Congress the Council's sense of concern over the intrusive effect that the office tower would have on the Washington skyline and the historic landmarks in and around the monumental core of the Nation's Capital. Also at the members' request, I have written to all involved Federal agencies notifying them of the Council's concern for the intrusive nature of the tower and urging them to initiate the Section 106 process as soon as possible to allow for the consideration of alternatives. I have attached copies of these letters to my written remarks.

Until such time as necessary documentation is compiled and an official request is made by a Federal agency for the Council to conduct its review, we are limited in our ability to accurately forecast what the specific outcome of the Council's review may be. However, based on what we do now know about the PortAmerica proposal, we have reached certain assumptions that will no doubt guide our review, and I would like to briefly share those with the Committee.

First, it appears that any of the anticipated Federal actions related to the development of the PortAmerica project would alone be sufficient to trigger the Section 106 process. Thus each of the involved agencies, i.e., the National Park Service, the National Capital Planning Commission, the Federal Highway Administration, and the Federal Aviation Administration, share an obligation to complete the Section 106 process prior to taking any requested action. We believe it is in the interest of all involved agencies to agree upon an agency to assume the lead agency responsibility for Section 106 compliance. Such a designation having been made, it would be essential for all involved agencies to carefully coordinate and participate to ensure that these requirements were fully met.

Second, early consultation with and the active involvement of the State Historic Preservation Officers from Virginia and the District of Columbia, as well as Maryland, is essential since

National Register properties in all those jurisdictions will be affected.

Third, the Council's review will be able to go forward only after such time as a thorough identification of historic and archeological properties has been completed by the involved agencies and determinations have been made, in consultation with the appropriate State Historic Preservation Officer, as to how such properties will be affected by the undertaking.

Fourth, given the national prominence of the historic properties involved and the level of public interest in the PortAmerica project, we feel it would be essential to actively involve the public in the council's review of the undertaking. The exact method of public involvement will depend on the degree to which the lead Federal agency may have solicited public involvement prior to requesting the Council's comments.

The Council is pleased with the strong interest that this Committee has taken in the PortAmerica project, and we hope these comments will be of help in the Committee's work. We will be pleased to keep the Committee informed on all subsequent development that take place for the PortAmerica project under the Section 106 process.

STATEMENT

OF

MR. JOHN O'BRIEN
DIRECTOR, ENGINEERING AND AIR SAFETY DEPARTMENT
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

BEFORE THE

ENVIRONMENT AND PUBLIC WORKS COMMITTEE

U. S. SENATE

OCTOBER 1, 1986

GOOD MORNING, MR. CHAIRMAN. I AM JOHN O'BRIEN, DIRECTOR OF THE ENGINEERING AND AIR SAFETY DEPARTMENT, AIR LINE PILOTS ASSOCIATION (ALPA). WITH ME IS MR. MIKE MOORE, OUR STAFF SPECIALIST RESPONSIBLE FOR SAFETY MATTERS ASSOCIATED WITH INSTRUMENT FLIGHT PROCEDURES AND THE CHARTING OF THESE PROCEDURES. HE IS VERY KNOWLEDGEABLE AND PROFICIENT IN DETERMINING THE EFFECT OF PROPOSED AND EXISTING OBSTRUCTIONS ON THE NAVIGABLE AIRSPACE.

ALPA'S PRIMARY OBJECTION TO THE PROPOSED PORTAMERICA TOWER IS ITS PROPOSED HEIGHT AND THE VERY SUBSTANTIAL ADVERSE EFFECT IT WOULD HAVE ON AIR CARRIER OPERATIONS INTO AND OUT OF THE WASHINGTON NATIONAL AIRPORT.

THERE ARE FIVE NONPRECISION INSTRUMENT APPROACH PROCEDURES TO RUNWAYS 36 AND 33 THAT WOULD BE ADVERSELY AFFECTED IF THE PORTAMERICA TOWER WERE TO BE CONSTRUCTED TO THE PROPOSED ELEVATION OF 729 FEET ABOVE MEAN SEA LEVEL (MSL). WE REALIZE THAT THE PRECISION INSTRUMENT APPROACH SYSTEM (ILS) IS THE PRIMARY AND MOST OFTEN USED INSTRUMENT APPROACH PROCEDURE TO RUNWAY 36. IT IS ALSO USED WHEN AIRCRAFT ARE REQUIRED TO APPROACH TO RUNWAY 36 AND THEN CIRCLE TO LAND ON RUNWAY 33. HOWEVER, THE NONPRECISION APPROACHES TO RUNWAY 36 ARE ABSOLUTELY NECESSARY WHEN THE ILS IS OUT OF SERVICE OR FAILS WHEN IT IS NEEDED THE MOST. WE UNDERSTAND THAT THIS ILS HAS BEEN OUT OF SERVICE OR HAS FAILED THREE OR FOUR TIMES WITHIN THE LAST SEVERAL YEARS DURING WEATHER CONDITIONS THAT REQUIRED THE USE OF THE NONPRECISION APPROACH PROCEDURES. ALTHOUGH WE REGARD ALL OF THE INSTRUMENT APPROACH PROCEDURES AT NATIONAL AIRPORT TO BE IMPORTANT, THE APPROACH THAT WE CONSIDER MOST IMPORTANT WHEN THE ILS TO RUNWAY 36 IS INOPERATIVE, IS THE VOR APPROACH TO RUNWAY 36. THIS PROCEDURE HAS A VERY ILS-LIKE APPROACH SLOPE GRADIENT OF 3.04 DEGREES AND PROVIDES THE REQUIRED STABILIZED APPROACH FOR TURBOJET AIRCRAFT.

Some will say that the nonprecision approaches to runway 36 are rarely used and therefore should not be considered in any decision regarding the PortAmerica tower. We totally disagree. The nonprecision approaches are like fire engines in the firehouse. They are not used much but must be immediately available when needed.

The PortAmerica tower, at 729 feet MSL, would be so located as to require enormous and degrading adjustments to these procedures in order to accommodate this tower. In low weather conditions, this would result in a devastating effect not only on air traffic control, but on the workload of the pilots, plus the additional expense to the airlines and a considerable inconvenience to the passengers.

We are aware that the developer of PortAmerica has offered to purchase and install a navigation aid that, if accepted by the FAA, could eliminate most of the adverse effects of the 729-foot tower. We would be inclined to accept this solution if the results would meet the eleven ALPA conditions stated in our letter to Mr. Glenn Bales, Manager, Airspace Planning Branch, FAA Eastern Region, dated September 23, 1986 (attached). Of these conditions, there are four that are most relevant.

(1) The presently established minimum descent altitudes and minimum visibilities required to conduct all of the nonprecision approaches at National Airport must not be increased at all.

(2) The designed final approach descent gradients for all of the nonprecision approaches to runways 36 and 33 must not be increased

SIGNIFICANTLY.

(3) THE FAA MUST NOT HAVE TO REQUIRE A DEPARTURE CLIMB GRADIENT IN EXCESS OF 200 FEET PER NAUTICAL MILE OR IMPOSE WEATHER CEILING AND VISIBILITY RESTRICTIONS FOR TAKE OFF FROM RUNWAYS 18 AND 15.

(4) ANY ADJUSTMENTS TO THE PROCEDURES OR ADDITION OF A NAVIGATION AID AT NATIONAL AIRPORT BECAUSE OF THE PRESENCE OF THE PORTAMERICA TOWER MUST NOT REQUIRE ANY WAIVER OF THE FAA'S PROCEDURES DEVELOPMENT CRITERIA (TERPS), OR OF THEIR FLIGHT INSPECTION CRITERIA.

WHILE WE BELIEVE THAT THE NAVIGATION AID SOLUTION OFFERED BY THE PROPONENT IS POSSIBLE, WE ARE NOT OPTIMISTIC THAT IT CAN BE REALIZED OR THAT IT WILL BE APPROVED BY THE FAA.

IN SUMMARY, MR. CHAIRMAN, THE AIR LINE PILOTS ASSOCIATION OBJECTS TO ANY CONSTRUCTION THAT WILL FURTHER COMPLICATE THE ALREADY COMPLEX APPROACH AND DEPARTURE ENVIRONMENT AT NATIONAL AIRPORT. THE RUNWAYS AT NATIONAL AIRPORT ARE RELATIVELY SHORT FOR AIR CARRIER TURBOJET AIRCRAFT. THIS IS WHY THE ILS-LIKE NONPRECISION APPROACH PATH ANGLES ARE SO IMPORTANT. AIRCRAFT, SUCH AS THE BOEING 757, HAVE A VERY EFFICIENT WING COMBINED WITH A TURBINE ENGINE POWER SYSTEM THAT MAKE IT DIFFICULT TO SLOW THE SPEED OF THE AIRCRAFT DURING STEEP DESCENTS, ESPECIALLY WHEN ON THE FINAL APPROACH TO A RUNWAY. THESE JET ENGINES MUST BE KEPT SPOOLED UP (ABOVE THE SLOW ACCELERATION RANGE) NOT ONLY TO HAVE IMMEDIATE POWER AVAILABLE FOR EMERGENCY GO-AROUNDS, BUT TO PROVIDE ANTI-ICING AND DEICING DURING DESCENTS IN WINTER. IF THE PORTAMERICA TOWER WERE TO BE BUILT TO THE PROPOSED HEIGHT OF 729 FEET MSL, AN INCREASE OF THE DESCENT GRADIENTS, IN EXCESS OF THE PRESENT GRADIENTS, COULD NOT BE

AVOIDED. A SLIGHT INCREASE COULD BE TOLERATED. HOWEVER, THIS WOULD DEPEND HEAVILY ON WHETHER THE DEVELOPER WILL BE ABLE TO HAVE HIS PLAN FOR A NAVIGATION AID APPROVED BY THE FAA AND THEN HAVE THIS FACILITY PERFORM IN ACCORDANCE WITH THE REQUIRED FAA STANDARDS.

IN THIS CASE, MR. CHAIRMAN, IT IS VERY IMPORTANT THAT THE PROMOTIONAL ENDEAVORS OF THE COMMUNITY DO NOT DEGRADE THE SAFETY OF AIRCRAFT INSTRUMENT FLIGHT OPERATIONS INTO AND OUT OF NATIONAL AIRPORT.

ON BEHALF OF THE 39,000 MEMBERS OF THE AIR LINE PILOTS ASSOCIATION, I THANK YOU FOR THIS OPPORTUNITY TO PRESENT OUR CONCERNS ABOUT THIS VERY SAFETY THREATENING PROPOSAL TO CONSTRUCT A VERY TALL STRUCTURE IN THE AIRCRAFT APPROACH AND DEPARTURE ENVIRONMENT AT NATIONAL AIRPORT.

September 23, 1986

Mr. Glenn A. Bales, Manager
Airspace Planning Branch, AEA-530
Federal Aviation Administration
Fitzgerald Building
John F. Kennedy International Airport
Jamaica, NY 11430

RE: 86-AEA-0158-OE
Revised

Dear Mr. Bales:

The Air Line Pilots Association, International (ALPA) is aware that the proponent in this case has responded to our safety concerns by electing to lower the height of the proposed Port America Building from 900 feet MSL (800 feet AGL) to 729 feet MSL (629 feet AGL) in an effort to minimize any adverse effect on aircraft operations into and out of Washington National Airport. We are also aware that he is endeavoring to obtain approval to purchase and install a navigation facility that would be located on or near the Wilson Bridge, which spans the Potomac River directly under the flight path of aircraft approaching to land on runway 36 at National Airport. The purpose of this navigation aid would be to provide a stepdown fix for aircraft conducting instrument approaches to runway 36 using the present VOR and NDB nonprecision approach procedures. This Association would not object to the establishment of a stepdown fix to accommodate this 729-foot building if all of the following conditions are met:

1. The building will not have any effect on either the existing ILS runway 36 procedure or the planned MLS runway 33 procedure.
2. The building will not cause any out-of-tolerance signal scalloping or roughness that would restrict or in anyway adversely affect existing or planned instrument flight procedures in the navigable airspace.
3. The presence of the building at 729 feet MSL will not result in any increase of the presently established landing minimums, for any instrument approach procedure at National Airport, including the radar and RNAV approach procedures.

AIR LINE PILOTS ASSOCIATION
535 Herndon Parkway, P.O. Box 1169, Herndon, Virginia 22070 (703) 689-2270
SCHEDULE WITH SAFETY AFFILIATED WITH AFL-CIO

4. Any adjustment to existing or planned procedures at National Airport, such as the establishment of a stepdown fix, will not require any waiver of TERPS or flight inspection criteria.

5. The establishment of a stepdown fix will not result in a final approach descent gradient in excess of 371 feet per nautical mile (3.5°) to the runway threshold, either before or after passing the stepdown fix. Please review attachment A, which is the definition of a stablilized approach that was developed by our Charting and Instrument Procedures Committee (CHIPS), and which generally represents the requirements for a stabilized approach contained in many airline operations manuals.

6. A nondirectional beacon (NDB) will not be used to establish a stepdown fix for the approaches to runway 36. Not only do these beacons become useless in a storm, but such a beacon, located only 1.5 nautical miles from the existing OXONN NDB, would create an unnecessary and unacceptable cockpit workload. The pilot would have less than sixty seconds to retune his receiver and identify the stepdown facility.

7. Crossing radials or bearings from noncollocated facilities, such as the Andrews AFB VOR, will not be used to establish a stepdown fix. Prudent pilot technique required by many commercial air carriers is to have the pilot who is not flying monitor the approach from the instrument located on his/her side of the cockpit. This could not be done if the pilot not flying would have to tune the receiver to another facility, identify the signal of that facility, and then, after passing the stepdown fix, retune to the Washington VOR and identify that signal too. All of this would be an excessive cockpit workload and the approach would be conducted without the safeguards provided by having both receivers display the VOR course deviations during the critical phase of the approach.

8. Adjustments to either the standard RNAV runway 33 approach procedure or the Special RNAV STOL runway 33 procedure established for Ransome Airlines will not require a computed glide path angle greater than the existing published angle. If a stepdown fix is used for the RNAV runway 33 procedure, it will be an along-track distance fix rather than a waypoint or facility.

9. A departure restriction requiring a specific ceiling and visibility for takeoff and/or a climb-gradient restriction in excess of 200 feet per nautical mile will not be established to avoid the building. Instead, a routing restriction will be established as both an IFR departure procedure and a Standard Instrument Departure (SID). The

departure clearance that is routinely given today by air traffic control when departing runways 18 or 15, is to depart south via the Washington VOR radial 185°, with radar vectors to the first enroute fix: no turns until reaching 5 DME. If the building is approved at the proposed height of 729 feet MSL, this routing, or one similar to it, will be published as the IFR/SID departure procedures.

10. Any navigation aid supplied by the proponent to accommodate this building will meet all FAA requirements associated with siting, installation, flight inspection, and maintenance prior to the start of construction.

11. The proponent, or any future owner of this building, will be required, as part of the FAA's determination of case 86-AEA-0158-OE, to give notice to the FAA of any planned alteration to the building, including the addition of receiving antennas and/or extensions of antennas (regardless of the provisions of FAR 77.15 (b)) unless the alteration or antenna additions and/or extensions are clearly shielded by other structures or antennas and would not increase the overall height of the building above 729 feet MSL.

There is justification for the conditions listed above. The existing design of the nonprecision instrument approach procedures provide a comfortable, stabilized approach to runway 36 at National Airport. This moderate, ILS-Like, approach slope is very necessary. The runways at National Airport are relatively short for turbojet operations and aircraft such as the Boeing 757 have very efficient wings combined with engine power systems that make it difficult to slow the speed of the aircraft. During descents on the final approach, pilots must keep these turbojet engines spooled up (above the slow acceleration range), not only to ensure the immediate availability of power to make an emergency go-around, but to provide the necessary anti-icing and deicing during approaches in winter. Anti-icing and deicing depend on hot bleed air from the engines. This air is not available when the thrust power is retarded too far during steep descents. This is why it is so important to restrict the designed descent gradients of approach procedures for Category C and D turbojet aircraft to a 3.5° (or less) approach slope for instrument approaches to the relatively short runways at National Airport.

If the conditions listed above cannot or will not be met, ALPA strongly objects to the construction of the building at the proposed site to any height in excess of 485 feet MSL (385 feet AGL). That height would permit a DME/RADAR stepdown fix for both the VOR and NDB approaches that would permit a stabilized approach for Category C and D air carrier aircraft and would eliminate any need for a published departure restriction. However, an along-track distance stepdown fix would still be necessary for the RNAV runway 33 approach.

We appreciate this opportunity to comment on this most important airspace case and urge the FAA to make a determination of Hazard if the conditions set forth above are not accepted.

Sincerely,

Michael L. Moore

Michael L. Moore
Staff Representative
Engineering and Air Safety Department

MLM:gtb
cc: FAA AEA-220

WHAT ARE THE U.S. DEPARTMENT OF THE INTERIOR'S (AND RELATED AGENCY) RESPONSIBILITIES FOR ENFORCING CONGRESSIONALLY-IMPOSED BUILDING HEIGHT LIMITS IN THE DISTRICT OF COLUMBIA AND OVERALL HEIGHT POLICY IN THE NATIONAL CAPITAL REGION?

STATEMENT AND SUBMISSION OF DOCUMENTS, GRAPHICS, AND PERTINENT DATA*

TO THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,

UNITED STATES SENATE

OCTOBER 1, 1986

Mr. Chairman and Members of the Committee:

My name is Kathryn A. Eckles. I have been a resident of the District of Columbia since 1948 and have long been active as a citizen in planning matters in the District of Columbia. During many walks around the Nation's Capital after coming to Washington, I learned to appreciate the aesthetic quality of the building height limits and how they protect federal buildings, parks and memorial sites.

I thank the Committee for the opportunity to present testimony and submit material for the record on the important oversight subject of the Committee today: The role of various Federal agencies, particularly the Interior Department, on land development, esthetic review and control, and building heights and related aesthetic, safety, and security impacts on the public interest, i.e., the Federal interest, in the District and the National Capital Region.

HEIGHT OF BUILDINGS ACT OF 1910
CONGRESS IMPOSES HEIGHT LIMITS IN THE DISTRICT OF COLUMBIA

In 1899, Congress imposed building height limits in the District of Columbia. This law was reaffirmed in the Height of

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*Attachments have been retained in committee files.

Buildings Act of 1910, which set a 130-foot maximum and other lower limits based on the width of abutting streets, a L'Enfant Plan concept, first promulgated as a general policy by Presidents George Washington and Thomas Jefferson. (For a history of these building height limitations, see Staff Report of the House Committee on the District of Columbia entitled BUILDING HEIGHT LIMITATIONS, U.S. GPO, 1976. 271 pp.)

The 1976 House staff study clearly documents that the Height of Buildings Act of 1910 and the special Schedule of Heights authorized by that Act for designated lower heights around the White House, Capitol, U.S. Supreme Court and other important Federal sites, was not to be a subject for amending by the Council of the District of Columbia. These height limits are not a matter of local zoning prerogative.

METROPOLITAN SQUARE'S QUESTIONED LEGAL HEIGHT AND RELATED WHITE HOUSE SECURITY AND AESTHETIC CONCERNS: NO FEDERAL ENFORCEMENT ACTION TAKEN

Two legal opinions written in the Office of Solicitor of the National Park Service in 1979 agreed with that House staff report conclusion in documenting that the Council of the District of Columbia had no authority to raise the permitted height of the proposed Metropolitan Square development, overlooking the north and south grounds of the White House, to a height of 130 feet (157 feet with roof structure). The Interior lawyers said that a legal study of the D.C. Home Rule Act confirmed their conclusion that the D.C. Council could not amend the Schedule of Heights authorized by the Height of Buildings Act of 1910 which set limits for certain areas surrounding the White House, Capitol and U.S. Supreme Court to 95 feet so these buildings would be more secure and aesthetically protected from overwhelming adjacent private development. (See attachments)

Yet in 1979, the Interior Department took no action to stop the Council Act illegally raising the height, a measure prohibited by the D.C. Home Rule Act, from becoming law. Interior could have effected its responsibility by bringing the matter to the attention of the proper oversight Committees of Congress or going into court, which it has recently done, to its credit, in the Techworld case, which also involves a potential violation of the Height of Buildings Act of 1910.

NATIONAL CAPITAL PLANNING COMMISSION MEMBERS NOT INFORMED OF HEIGHT AND SECURITY QUESTIONS

The Interior Department also should have brought its legal concerns to the attention of the National Capital Planning Commission (NCPC), a Federal body dominated by the Mayor of the District of Columbia, a condition not entirely contemplated by the drafters of the D.C. Home Rule Act. NCPC, on which a representative of the Secretary of Interior sits, should have brought these concerns to the attention of the congressional representatives on NCPC, but this representative or NCPC officials did not, and no congressional committee, journalist, or federal investigation has asked him (John Parsons) why. In addition, Reginald Griffith, NCPC executive director, knew of these written legal and security concerns, but he told no NCPC members other than the Mayor's representative (James Gibson). A conflict arose because Griffith was appointed by the NCPC chairman (David Childs), a presidential appointee, who was the architect for the illegally high building, Metropolitan Square, to be built by a Washington developer (Oliver T. Carr, Jr.). All of this was also known by the executive assistant of Interior Secretary Cecil Andrus (Robert Mendelsohn).

In the meantime, the U.S. Secret Service wrote in 1979 that the Federal government should oppose building Metropolitan Square to an illegal 157-foot level because that height would create "a permanent, uncontrollable security problem for the White House, the President, his family and visiting heads of state." (See attachment) This position has been reaffirmed in five Secret Service letters, the latest known to be written in September, 1985.

All the aforenamed officials knew about the Secret Service concerns as well, but took no pertinent, responsible action to stop the illegal act of the D.C. Council. This is even more incredibly irresponsible in view of the fact that the White House and grounds are a National Park. The responsible, pertinent action was summarized in an NCPC staff report not shown to NCPC members.

NOT A HOME RULE ISSUE

Let me remind the Committee, that this is not a Home Rule issue. The D.C. Council does not have authority to give away building height rights vested in the American people for the security and aesthetic protection of the Federal government at its seat, the District of Columbia.

RECOMMENDATIONS—MORE OVERSIGHT AND LEGISLATIVE ACTION NEEDED

The solution to preventing future violations of the Height of Buildings Act and resulting security and aesthetic disasters such as Metropolitan Square, and potentially Techworld, is for Congress to enact an amendment to the Height of Buildings Act and the D.C. Home Rule Act making it completely clear that the D.C. Council cannot give away height rights not controlled or owned by the District of Columbia or federally-owned streets or alleys. The responsbilities of the Interior and Justice Departments and NCPC in enforcing these acts should be written into law also.

This legislative solution was discussed on the floor of the Senate in the last session of this Congress by Senators Lautenberg, Abdnor, Moynihan, and DeConcini, who spoke in favor of an amendment offered by Senator Chiles to resolve this jurisdictional misunderstanding and prevent more illegal security and aesthetic disasters such as Metropolitan Square. (See attachment)

Most of the documents discussed in this statement (with attachments) were obtained by citizens under the Federal Freedom of Information Act. In total, over 1,000 pages of documents have been so obtained and any or all can be made available to the Committee upon request.

Thank you.

Maryland Historical Trust

October 1, 1986

STATEMENT OF MR. J. RODNEY LITTLE TO THE UNITED STATE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

Mr. Chairman and Members of the Committee:

My purpose for writing is to provide testimony on behalf of my office, the Maryland Historical Trust, concerning our role in the environmental assessment procedures relating to the PortAmerica project in Prince George's County, Maryland. This project has been the focus of considerable attention in Maryland as well as elsewhere, and the opportunity for comment provided by this hearing is welcomed.

The Maryland Historical Trust's involvement relating to the PortAmerica project began in 1979. We first commented on potential effects to cultural resources within and adjacent to what is now known as the PortAmerica property in 1979, when, through the Federal Section 106 review procedure established by the National Historic Preservation Act (NHPA), we commented on the effect of a proposed federally funded highway interchange at Maryland Route 210 and U.S. I-95. Since 1979 we have been actively involved in the review of all proposed projects which have the potential to affect the cultural resources located on and near the property.

The Maryland Historical Trust (MHT) is Maryland's State Historic Preservation Office, and as such we are the primary government agency in Maryland responsible for the protection of our state's cultural heritage. Federal and Maryland state law require that governmental agencies consult with the Trust to determine whether projects they are undertaking, funding, licensing, or permitting will affect cultural resources. These statutory requirements specify MHT involvement in all undertakings where there is Federal or State of Maryland involvement. In addition, the Trust's responsibility for the study and protection of all of Maryland's cultural resources means that we comment upon all known undertakings within the state that threaten to adversely affect significant cultural resources.

It is important to point out that the Maryland Historical Trust has no specific approval/disapproval authority either under federal or state law. Rather, governmental agencies providing funding, licenses or permits for a project must consult with the Trust, or more specifically the State Historic Preservation Officer (SHPO), prior to project initiation or approval. In all instances, the final authority to approve or disapprove a project lies with the involved federal or state agency, with the Trust's role being advisory in nature. It should be pointed out that

Shaw House, 21 State Circle, Annapolis, Maryland 21401 (301) 269-2212, 269-2438, 269-2850
Department of Economic and Community Development Admin. S & P TPS

Maryland law specifies that when a project is subject to both Federal Section 106 review and state review, then the Federal Section 106 review takes precedence over and substitutes for state review. It should also be made clear that while the involved federal or state agency has the ultimate approval or disapproval authority in the review process, the SHPO's advice traditionally has been followed by involved agencies.

If federal funds, permits or licenses are required for the PortAmerica project (which they are almost certain to be), then the project will be subject to review under Section 106 of the NHPA and, if land is transfered from federal ownership, also under Section 110 of the same Act. Both Sections 106 and 110 require the involved federal agency or agencies to consult with the SHPO. If only Maryland state funds, licenses or permits are involved, then a state review process very similar to the Federal Section 106 process will be triggered.

In addition to the state and federal review procedures which may come into play, Prince George's County approval of the project concept plan (through the Maryland-National Capital Park and Planning Commission (MNCPPC) contained a requirement for the PortAmerica developer to coordinate with the Trust regarding effects on cultural resources. The approval specifically required the developer to identify all significant components of the early 18th century Addison Plantation archeological site and, if necessary, to develop a plan to mitigate adverse effects by the project on such resources. The County specified that all such actions should be undertaken in consultation with the Trust. It should be emphasized that at this time, the County's specification that the developer must consult with the Trust is the only formal Trust involvement with the PortAmerica project. It is important to point out that the Trust has had no direct formal coordination with any involved federal agency. As no federal (or state) agency has forwarded for our comment information regarding its involvement with the PortAmerica project, we must assume that the developer of the PortAmerica property has not applied for any federal (or state) funds, licenses or permits at this time.

We have, however, informally discussed our concerns with the Advisory Council on Historic Preservation, the National Park Service, the National Capital Planning Commission, and, as a result of our earlier involvement with the construction of the I-95/Md. Rt. 210 interchange adjacent to the PortAmerica property, the Federal Highway Administration.

As a multiplicity of federal agencies will clearly have a role in assessing the proposed PortAmerica project, we strongly recommend that the Administration designate a single lead federal agency to serve as the federal point of contact and to work with us in initiating and completing the Section 106 review process.

Our actions thus far concerning the PortAmerica project have primarily involved consultation with the developer as required by the Prince George's County/MNCPPC approval of the project. In addition, during the review of the proposed highway interchange at I-95 and Md. Rt. 210, we had extensive involvement through the Section 106 process with the Federal Highway Administration (FHWA) and the Maryland State Highway Administration, who served as FHWA's representative. As a result of this involvement, an archeological data recovery program was performed using federal funds at a portion of the Addison Plantation archeological site. The Addison Plantation archeological site has been determined to be eligible for listing on the National Register of Historic Places and is, in our opinion, one of the most significant archeological sites in Maryland. The highway interchange affected approximately 20% of the site area. The remaining 80% of the site lies within the PortAmerica property. We have been working with the PortAmerica developer to design and carry out an initial program of additional archeological survey and testing within the 80% of the site lying outside the highway right-of-way. This investigation is being funded by the PortAmerica developer and is ongoing at this moment. Preliminary results indicate that a wealth of additional archeological resources are within the PortAmerica property. We will continue to work closely with the developer to determine what actions must be taken to mitigate any adverse effects the project may have on these archeological resources.

The other applicable processes, specifically the review processes embodied in Sections 106 and 110 of the NHPA and in Article 41, Section 181 of the Annotated Code of Maryland, have not come into play to date.

My office considers public participation and review to be an important component of all review actions. Both federal and Maryland historic preservation regulations incorporate procedures which allow for public review and comment. The Prince George's County/Maryland-National Capital Park and Planning Commission review of the PortAmerica project also incorporated an opportunity for public comment. The Trust has answered numerous public inquiries regarding the project and, in all of these instances, has encouraged active public involvement.

Currently, the Trust has no specific timetable for additional procedures relating to the PortAmerica project. Until the initiation of a formal Federal Section 106 review or a State of Maryland review, we will continue to work independently with the project developer whenever possible, and to assist Prince George's County and the M-NCPPC in ensuring that their project approval requirements are met. As the PortAmerica developer currently wishes to begin construction within a portion of the property containing the Addison Plantation archeological site early in 1987, the Trust's main efforts are currently directed toward the completion of the of the archeological survey of the Addison Plantation site so that we will have a clear idea of just what archeological resources are present. Once we have this information, we will work with the developer and all other involved parties to determine how any adverse effects to the site can best be mitigated. Following this, we will work with all involved parties to determine whether other portions of the project will have either direct or indirect adverse effects on cultural resources and, if such adverse effects are to occur, to find a means to eliminate or reduce them.

Inconclusion, the Maryland Historical Trust has taken an active role in reviewing the PortAmerica project for its potential effect on the cultural resources of Maryland. To date, however, we have seen very little evidence that any involved or potentially involved federal agencies have moved to ensure their compliance with Section 106 of the NHPA. We strongly encourage the involved federal agencies to move swiftly in the designation of a lead agency for the review of this project and for that agency to consult with us on the project as early as possible in the review process. The proven federal-state review mechanism embodied in the National Historic Preservation Act has very effectively dealt with projects of this nature over the last 20 years. We feel confident that, if this mechanism is initiated as soon as possible, all cultural resource protection concerns will be addressed for this project as well.

We appreciate this opportunity to provide our comments.

Advisory
Council On
Historic
Preservation

The Old Post Office Building
1100 Pennsylvania Avenue, NW, #809
Washington, DC 20004

September 3, 1986

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

I am writing to you regarding a matter of great concern to the Advisory Council on Historic Preservation, the proposed PortAmerica project in Prince George's County, Maryland. The Council is an independent Federal agency responsible for advising the President and Congress on matters pertaining to historic preservation and I am writing to you under this general advisory authority.

PortAmerica is a large mixed-use development that is proposed for construction just south of the Washington Capital Beltway south of Washington, D.C. The project includes construction of a 42-story, 632-foot-high office tower, surfaced with mirrored glass, that will dominate the Washington skyline.

At its meeting on July 22, 1986, the Council reviewed photographs provided by the National Capital Planning Commission, on which the projected appearance of the tower had been superimposed. Based on this review, we are extremely concerned that the massive scale and height of the tower will constitute a major visual intrusion on a number of Washington's most significant historic properties, which constitute the monumental core of our Nation's Capital. It would also impact historic Old Town Alexandria and even be prominent in the view from the White House.

We believe that the Federal Government has a unique interest in protecting historic visual qualities of our Nation's Capital and its environs, which are resources important to the entire Nation. We believe that the Federal Government should do all it can within its power to encourage revision of the PortAmerica tower plans in order to properly consider these historic qualities. The Council is willing to provide its assistance and expertise to achieve this objective.

Respectfully,

Cynthia Grassby Baker
Chairman

IDENTICAL LETTERS SENT TO THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE

Advisory
Council On
Historic
Preservation

The Old Post Office Building
1100 Pennsylvania Avenue, NW, #809
Washington, DC 20004

SEP 12 1986

Honorable Donald P. Hodel
Secretary of the Interior
Washington, DC 20240

Dear Mr. Secretary:

Enclosed is a letter that I have just sent, at the request of my fellow Council members, to the President and Congress concerning the PortAmerica project in Prince George's County, Maryland. We understand that your Department is involved in this project through the conveyance of a 55-acre parcel of Federal parkland to the Maryland-National Capital Park and Planning Commission.

The Council is concerned about this project, and has asked me to express that concern to the President and Congress. It should be noted, however, that my letter was sent under the Council's general advisory authorities. Neither it nor this letter constitute the comments of the Council on this undertaking pursuant to Section 106 of the National Historic Preservation Act.

We encourage Federal agencies whose decisions may affect this project to initiate compliance with Section 106 as soon as possible. We believe early review of the project's details can increase the number of alternatives available for consideration. We have instructed our staff to bring the Council's concerns about construction of the high-rise "World Trade Center" tower to the attention of involved Federal agencies during the Section 106 process.

We look forward to working with your Department in the Section 106 process.

Sincerely,

Cynthia Grassby Baker
Chairman

Enclosure

Advisory
Council On
Historic
Preservation

The Old Post Office Building
1100 Pennsylvania Avenue, NW, #809
Washington, DC 20004

SEP 1 2 1986

Honorable Elizabeth Hanford Dole
Secretary of Transportation
Washington, DC 20590

Dear Madam Secretary:

Enclosed is a letter that I have just sent, at the request of my fellow Council members, to the President and Congress concerning the PortAmerica project in Prince George's County, Maryland. We understand that your Department is involved in this project through issuance of approval by the Federal Highway Administration for a connection between the development and Interstate Highways 95 and 295 and by an evaluation and subsequent determination by the Federal Aviation Administration on whether or not the proposed high-rise tower will constitute a hazard to air navigation.

The Council is concerned about this project, and has asked me to express that concern to the President and Congress. It should be noted, however, that my letter was sent under the Council's general advisory authorities. Neither it nor this letter constitute the comments of the Council on this undertaking pursuant to Section 106 of the National Historic Preservation Act.

We encourage Federal agencies whose decisions may affect this project to initiate compliance with Section 106 as soon as possible. We believe early review of the project's details can increase the number of alternatives available for consideration. We have instructed our staff to bring the Council's concerns about construction of the high-rise "World Trade Center" tower to the attention of involved Federal agencies during the Section 106 process.

We look forward to working with your Department in the Section 106 process.

Sincerely,

Cynthia Grassby Baker
Chairman

Enclosure

Advisory
Council On
Historic
Preservation

The Old Post Office Building
1100 Pennsylvania Avenue, NW, #809
Washington, DC 20004

SEP 12 1986

Honorable Robert K. Dawson
Assistant Secretary
for Civil Works
Department of the Army
The Pentagon
Washington, DC 20310

Dear Mr. Dawson:

Enclosed is a letter that I have just sent, at the request of my fellow Council members, to the President and Congress concerning the PortAmerica project in Prince George's County, Maryland. We understand that the Corps of Engineers will be involved in this project through the issuance of one or more permits for proposed dredging and filling in the Potomac River.

The Council is concerned about this project, and has asked me to express that concern to the President and Congress. It should be noted, however, that my letter was sent under the Council's general advisory authorities. Neither it nor this letter constitute the comments of the Council on this undertaking pursuant to Section 106 of the National Historic Preservation Act.

We encourage Federal agencies whose decisions may affect this project to initiate compliance with Section 106 as soon as possible. We believe early review of the project's details can increase the number of alternatives available for consideration. We have instructed our staff to bring the Council's concerns about construction of the high-rise "World Trade Center" tower to the attention of involved Federal agencies during the Section 106 process.

We look forward to working with the Corps of Engineers in the Section 106 process.

Sincerely,

Cynthia Grassby Baker

Cynthia Grassby Baker
Chairman

Enclosure

Advisory
Council On
Historic
Preservation

The Old Post Office Building
1100 Pennsylvania Avenue, NW, #809
Washington, DC 20004

September 3, 1986

Honorable Glen T. Urquhart
Chairman
National Capital Planning Commission
1325 G Street, N.W.
Washington, D.C. 20576

Dear Chairman Urquhart:

Enclosed is a letter that I have just sent, at the request of my fellow Council members, to the President and Congress concerning the PortAmerica project in Prince George's County, Maryland. We understand that, pursuant to Section (b)(1)(c) of P.L. 99-215, your Commission makes a determination of the developer's compliance with the 1985 Memorandum of Understanding between the Commission and the developer.

The Council is concerned about the PortAmerica project, and has asked me to express that concern to the President and Congress. It should be noted, however, that my letter was sent under the Council's general advisory authorities. Neither it nor this letter constitute the comments of the Council on this undertaking pursuant to Section 106 of the National Historic Preservation Act.

We encourage Federal agencies whose decisions may affect this project to initiate compliance with Section 106 as soon as possible. We believe early review of the project's details can increase the number of alternatives available for consideration. We have instructed our staff to bring the Council's concerns about construction of the high-rise "World Trade Center" tower to the attention of involved Federal agencies during the Section 106 process.

We look forward to working with your Commission in the Section 106 process.

Sincerely,

Cynthia Grassby Baker
Chairman

TESTIMONY OF THE MOUNT VERNON LADIES' ASSOCIATION REGARDING THE IMPACT OF THE PROPOSED PORTAMERICA PROJECT

October 1, 1986

In the year 1781, the Marquis de Chastellux paid a visit to Mount Vernon and remarked that the setting of George Washington's home was "more magnificent than I can paint to a European imagination." Today, world travelers follow in the footsteps of Chastellux and still relish the remarkable beauty and tranquility of Washington's view across the Potomac River. In a region where property development is progressing at an extremely rapid pace, the view from George Washington's east lawn remains an integral part of the historic traditions of the Mount Vernon estate. It is appreciated by nearly one million visitors each year who travel from across the nation and the world to pay homage to "The Father of Our Country."

Ever since the Mount Vernon Ladies' Association purchased the estate from the Washington Family in 1858, the preservation of the view has been a major goal of this non-profit Association. For the past thirty years, the Association has actively worked to protect this view by encouraging Congress to create a national park which includes a large portion of the Maryland shoreline area. When President Ford signed Public Law 93-444 on October 15, 1974, he officially provided for the preservation and protection of Piscataway Park, and took a major step toward protecting George Washington's historic view.

The Mount Vernon Ladies' Association is not against the development of property and the reasonable expansion of both residential and business communities. Yet it actively seeks to protect this unique and historic view from the Mount Vernon estate for the benefit of all American people, both now and in the years to come. We actively encourage that buildings constructed within the viewshed of Mount Vernon be maintained at a level below the tree line. We believe that with careful planning and construction, our natural resources can be utilized effectively without building skyscrapers that will disturb this view, which is important to Americans today and will be even more appreciated by generations still to come.

Studies and measurements conducted by the National Capital Planning Commission have demonstrated to the Mount Vernon Ladies' Association that the PortAmerica tower will likely be visible from the Mount Vernon estate, particularly on a clear day in the winter time, when our trees have lost their foliage.

Therefore, we would encourage the Committee on Environment and Public Works to consider lowering the approved height of the PortAmerica tower and creating a standard for building heights which would protect the Mount Vernon view from further disruptions in the months and years ahead.

Although our Association has a very close and productive relationship with the National Park Service, the Mount Vernon Ladies' Association was founded as a totally independent organization which purposely avoids becoming involved in political or governmental affairs. However, the Association has always considered the view from Mount Vernon a national treasure in and of itself, and has appealed to congressmen, senators and a variety of federal, state and local government officials to argue the case for protecting this remarkable view.

We would be pleased to offer any additional information which your Committee might require, and would consider it an honor and a pleasure to discuss in more detail the utmost importance of saving this historic view for all Americans.

Respectfully submitted,

James C. Rees
Assistant Director
Mount Vernon Ladies' Association

UPDATED 9/30/86

CHRONOLOGY OF RECENT EVENTS RELATED TO COMMISSION INVOLVEMENT IN THE PROPOSED PORTAMERICA PROJECT IN PRINCE GEORGE'S COUNTY, MARYLAND

11-6-84	James T. Lewis (of JTL Enterprises...the developer) purchases controlling interest from James Birch and others in Smoot Bay property then known as "Bay of Americas"
Early Dec 84	Lewis contacts Griffith (Executive Director of NCPC) indicating his desire to work with the Commission in order to reach an agreement on development of the waterfront and determine the Commission's position with respect to legislation that would transfer 55 acres of park land to MNCP&PC.
12-11-84	Letter from James Lewis to Daniel Shear (General Counsel for NCPC) enclosing "proposed rough draft letter in connection with the Bay of Americas property....". Indicated that discussions "hopefully can lead to a Memorandum of Agreement". This marks beginning of actual negotiations on the terms and conditions of a proposed Memorandum of Understanding (MOU) regarding the 'waterfront parcel'.
1-10-85	Mr. Griffith reports to Commission in Executive Session that Mr. Lewis had approached staff in the hopes of reaching an agreement on the development on the Smoot Bay Waterfront. Mr. Lewis has proposed a written agreement for staff evaluation. Mr. Griffith advised Commission that staff was evaluating the proposal and would give a full report at next meeting.
2-5-85	Griffith and other members of NCPC staff meet with Paul Zanecki (Counsel for the developer) and others to discuss a possible MOU.
2-7-85	In Executive Session, Commission staff reviews developers proposed restrictions on waterfront development, a comparison of existing NCPC policy with that draft proposal and a staff draft, dated 2-5-85, "Suggested Development Guidelines for the Proposed Memorandum of Agreement on the Smoot Bay Waterfront between NCPC and the Developer." Staff requests Commission members review materials and let staff have any comments and suggestions for consideration in future meetings with the developer. Staff reports that transfer legislation has been introduced in the House by Mrs. Holt.
2-11-85	Griffith and NCPC staff meet with Lewis, John Burgee (of Johnson and Burgee, Architects) and others to discuss MOU.
2-21-85	Griffith and staff meet with Lewis et al to discuss MOU.
2-28-85	Griffith and staff meet with Lewis and Zanecki to discuss MOU.

	3-7-85	Commission reviews and comments on undated draft MOU as negotiations with Lewis continue.
	4-2-85	Griffith and staff meet with Lewis and Burgee on MOU.
	4-4-85	Commission reviews draft MOU dated April 3, 1985, and a schematic conceptual work plan for the waterfront area embodying the concept that Johnson/Burgee is developing.
	4-22-95	Griffith and staff meet with Monica Healy (of Senator Mathias' staff), Tony Bevinetto of Senate Subcommittee on Public Lands, Reserved Water and Resource Conservation staff and others to discuss the proposed park transfer legislation.
	4-26-85	Griffith and staff meet with Dale Crane of House Subcommittee on National Parks and Recreation staff to discuss the proposed park transfer legislation.
	5-2-85	Commission reviews a revised draft of proposed MOU and revised sketch plans for the waterfront. Commission resolves remaining issues and authorizes execution of MOU with JTL Enterprises, LTD.
	5-7-85	MOU executed by NCPC and JTL
	7-12-85	Senate Subcommittee hearing on proposed transfer legislation.
	7-18-85	House Subcommittee hearing on proposed transfer legislation.
1	8-26-85 FIRST NCPC NOTICE OF A TALL BLDG.	Washington Post article about proposed 50 story World Trade Center Building at PortAmerica.
2	8-26-85	Jim Lewis letter to Reg Griffith explaining 50 story building would not be on waterfront or in the MOU area. (Received 8-27-85)
	9-5-85	Comission discusses newspaper article and Jim Lewis' letter of August 26, 1985 about the proposed 52-storytower on Beltway Parcel at PortAmerica. Directs staff to analyze the impact of the proposed tower on Federal lands and interest in the National Capital.
	10-1-85 HEIGHT OF TALL BLDG NOT FIXED	Jim Lewis shows model of possible 50 story building proposal at his Alexandria office to NCPC staff. Reg Griffith outlines what he feels Commission concerns are likely to be (especially regarding the unprecedented height of the building). Lewis indicates he has not made a decision on the proposed height of the building.

3 10-3-85 NCPC, in Executive Session, discusses 50 story building proposal and preliminary staff draft of 7 alternative approaches to identifying more acceptable building heights in the Smoot Bay area. Zanecki advises the Commission that Lewis has made no decision on his architects proposal. Consequently no action taken by the Commission at this time.

4 10-17-85 Oberlander (Assoc. Exec. Director of NCPC) letter to Lewis about 50 story proposal and NCPC discussions on 9-5-85. The letter to Lewis stated that

> "Because of expressed concern about the proposed 50 story height, the Commission directed the staff to study what the visual impact of such a building would be in Federal interest in the National Capital. The preliminary staff studies were reviewed by the Commission at its October 3rd meeting, following which the Commission directed the staff to discuss with you the possibility of reducing the proposed height to a reasonable level.
>
> I am enclosing for your review a somewhat revised version of the seven alternatives developed by the staff and discussed with the Commission on October 3rd. No action was taken at that time since Mr. Zanecki had indicated you had not yet made a decision on the building height and that you planned to consult with the Commission and the National Park Service again about plans before your official submittal to Prince George's County."

10-17-85 House Interior and Insular Affairs Committee reported out bill (HR 3003) on transfer of park land.

5 10-18-85
HT. OF TALL BLDG NOT FIXED
Lewis letter to Griffith about waterfront comments. Indicated willingness to discuss 50 story proposal after he (Lewis) is back from 2 week trip.

10-23-85 House approves bill on transfer of park land as reported by House Committee.

11-12-85
HT. OF TALL BLDG NOT FIXED
NCPC staff meets with Lewis to discuss the Commission's concerns about the suggested 50 story building and possibility of reducing he height to a "reasonable" leval. Lewis agreed to arrange for Philip Johnson and John Burgee, the architects, to come and discuss proposal with the Commission at its December meeting.

11-18-85 Senate Energy and Natural Resources Committee reported out bill on transfer of park land.

	12-3-85	Senate approves bill on transfer of park land (contains language different from House bill)
6	12-5-85 HT. OF TALL BLDG NOT FIXED	In the Commission's Executive Session, Mr. Griffith reports on his 11-12-85 meeting with Lewis. Griffith reported that Lewis would discuss the Commission's concerns with his architects. Since Philip Johnson cannot make December meeting, they will come to the Commission's January meeting to discuss the 50 story proposal. Lewis requested that the discussion be in Executive Session to avoid premature press.
	12-6-85	House concurs in Senate language in park transfer language.
	12-19-85	OMB requests Commission comments within 48 hours on enrolled bill authorizing Secretary of Interior to transfer 55 acres of Federal park land in Smoot Bay area.-
	12-19-85	Favorable letter sent to OMB signed by Mr. Griffith on behalf of the Vice Chairman of NCPC.
	12-26-85	President signs park transfer bill (HR 3003). Becomes P.L. 99-215.
7	12-26-85 HT. OF TALL BLDG NOT FIXED	Lewis letter to Griffith transmitting "most recent land use plan for our PortAmerica project" showing proposed 50 story tower and its relationship to other proposed buildings. "Changes substantially the former plans...material... is subject to change from time to time." Lewis indicated his intent to fly helicopter over site of proposed 50 story building in lieu of flying balloons as requested by Commission staff. He indicated that Johnson, Burgee and he will be at 1-9-86 meeting, and that he wants "..to consider [NCPC's] views after [the Commission has] had the opportunity of hearing what the architects have to say as to their plans."
8	1-9-86 LEWIS' FIRST INDICATION THAT HE MAY PROCEED WITH 50 STORY BLDG	NCPC meeting with Lewis, Johnson and Burgee in Executive Session. Developers team describes proposed concept plan for both waterfront and beltway parcels. Considerable discussion of 50 story proposal with architects justifying proposal and Commission members questioning, objecting to and criticizing the 50 story building. Lewis indicates "I am certainly persuaded by what Philip and John say is a much more attractive development than one in which you do have a nest of buildings there or basically another Rosslyn........I am committed to the architecture of the project....." After the Commission's discussion with Lewis and architects, Bob Gresham (NCPC Assistant Exec. Director) presented staff review and recommendations (see January 6, 1986 memo which was distributed to Commission on 1-7-86). In response to questions about schedule, Zanecki indicated January 22nd is target date to submit application to P.G. County.

2-26-86	MNCP&PC (Rovelstad) letter to Mr. Urquhart notifying Commission of Conceptual Site Plan applicaton for PortAmerica and tentative date of May 1, 1986 for hearing by P.G. Planning Board. Copy of multi-volume application documents enclosed.
4-3-86	Commission reviews the Conceptual Site Plan Application for PortAmerica, the staff recommendations and hears from interested parties.
4-16-86	Meeting of representatives of eleven Federal agencies, including the Commission, that potentially may be involved in some way in the PortAmerica project.
4-17-86	At special meeting, Commission determines its comments on the Conceptual Site Plan Application for PortAmerica and authorizes testimony at public hearings in Prince George's County.
5-1-86	Public hearing by Prince George's County Planning Board on the Conceptual Site Plan Application for the proposed PortAmerica project. Commission representative testified in support of application except for the proposed 52-story World Trade Center which was opposed.
7-7-86	Public hearing by Prince George's County Council on the Conceptual Site Plan Application for the proposed PortAmerica project. Commission representatives summarizes support for application except for the proposed 52-story World Trade Center which was opposed.
7-12-86	Public hearing on proposed transfer of Federal park land on Smoot Bay by the U.S. Senate Subcommittee on Public Lands, Water and Resource Conservation. Commission representative testifies in support of proposed transfer.
7-18-86	Public hearing on proposed transfer of Federal park land on Smoot Bay by the U.S. House of Representatives Subcommittee on Parks and Recreation. Commission representative testifies in support of proposed transfer.
7-31-86	New York Regional Office of the Federal Aviation Administration issues Notice of Aeronautical Study 86-AEA-1058-OE of proposed construction at the proposed PortAmerica project in Oxon Hill, Maryland. Proposed 52-story building would rise to 749 feet above the ground or to 849 feet above mean sea level. Comments due on or before October 1, 1986.
8-4-86	Meeting of representatives of the Commission, the U.S. Army Corps of Engineers, the National Park Service, the Federal Aviation Administration and the Federal Highway Administration on a consolidated Federal environmental review of the PortAmerica project.

8-29-86	FAA Regional Office issues revised notice of aeronautical study with height of proposed tower reduced 120 feet to 629 feet above the ground or 729 feet above mean sea level.
9-4-86	Commission discussion with Mr. James Lewis on the reduction in the height of the tower from 52 to 42 stories (120 feet) for air navigation reasons. Discussed the possibility of further reductions to reduce the aesthetic or visual impact on the immediate vicinity and on the Monumental Core. Also hears testimony from Mr. ParrisGlendening, the County Executive of Prince George's County and other interested parties. The Commission reaffirmed its opposition to the Tower Building. James Lewis stated that no further reductions in height were possible.